

United States  
2  
Circuit Court of Appeals

For the Ninth Circuit.

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Transcript of Record.  
(IN FOUR VOLUMES.)

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DAVID TAYLOR,

Appellant,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES COMPANY,  
a Corporation, TUNGSTEN PRODUCTS COMPANY,  
a Corporation, MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING, C. W POOLE,  
R. NENZEL, H. J. MURRISH, L. A. FRIEDMAN,  
C. H. JONES, G. K. HINCH, J. T. GOODIN, V. A.  
TWIGG, J. C. HUNTINGTON and LENA J. FRIED-  
MAN, Individually,

Appellees.

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VOLUME IV.  
(Pages 1185 to 1509, Inclusive.)

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Upon Appeal from the United States District Court for the  
District of Nevada.

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CLERK.

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That also on the same day at a meeting of the stockholders of said Tungsten Products Company, at which meeting all of the stockholders of said corporation were present, a resolution was duly passed and adopted by a vote of the stockholders owning and holding all of the capital stock of said Tungsten Products Company, authorizing, ratifying, confirming and approving the transfer of the properties of said corporation to this defendant in accordance with the terms and provisions of said written instrument, hereunto annexed, marked Exhibit 1. [941]

That thereafter a meeting of the stockholders of said Nevada Humboldt Tungsten Mines Company was called to be held on the 23d day of August, 1919. That notice of said meeting and of the purposes and objects thereof was given to each and all of the stockholders of said corporation in the manner provided for in the by-laws of said corporation five days prior to the date on which the said meeting was held. That at said meeting there were present in person or by proxy stockholders representing and owning nine hundred forty one thousand eight hundred (941,800) shares out of a total of one million (1,000,000) shares of the capital stock of said corporation. That although the plaintiff, Taylor, did not attend the said meeting in person, he nevertheless knew that the same was to be held at said time and place and caused a communication to be delivered to said meeting.

That at said meeting resolution authorizing the sale and transfer provided for in Exhibit 1 were

passed and adopted by stockholders owning and holding 941,800 shares out of the aforesaid total capitalization of one million (1,000,000) shares. Full, true and correct copies of said resolutions are hereunto annexed, marked Exhibit 4 and are hereby referred to and made a part hereof.

12. That thereafter and pursuant to the said resolutions deeds and bills of sale were duly executed to this defendant in accordance with said contract, Exhibit 1, transferring and conveying to this defendant the property, real and personal, so agreed to be transferred and conveyed to him by the aforesaid agreement, Exhibit 1.

13. That contemporaneously with the execution and delivery of said deeds and bills of sale this defendant executed and delivered to Nevada Humboldt Tungsten Mines Company and [942] and Tungsten Products Company a mortgage as called for by the said Exhibit 1. A copy of said mortgage is hereunto annexed, marked Exhibit 5 and is hereby referred to and made a part hereof.

14. That pursuant to the terms and provisions of said contract, Exhibit 1, this defendant entered into possession of all of the property, real and personal, which he agreed to purchase under the terms of said contract, Exhibit 1, and he and his successors ever since on or about the 16th day of August, 1919, have continued to be and now are in possession thereof.

15. That pursuant to the terms of said contract, Exhibit 1, and said mortgage, Exhibit 5, this defendant has already paid, or caused to be paid, to

the said Nevada Humboldt Tungsten Mines Company and Tungsten Products Company the following sums of money at the following times:

\$50,000 on the 1st day of September, 1919;

\$50,000 on the 1st day of October, 1919;

\$50,000 on the 15th day of November, 1919;

\$50,000 on the 27th day of December, 1919;

\$33,333.33 on the 4th day of February, 1920;

\$25,000 on the 4th day of May, 1920.

16. That the said sums of money so paid pursuant to said contract, Exhibit 1, and said mortgage, Exhibit 5, aggregating Two Hundred Fifty-eight Thousand Three Hundred Thirty-three and 33/100 Dollars (\$258,333.33), have been received by said corporations and that more than Two Hundred Thousand Dollars (\$200,000) of said sums has been actually used by them in the payment of their debts and obligations, and that upwards of One Hundred Thirty-three Thousand Two Hundred Sixty-nine and 99/100 Dollars (\$133,269.99) of said amount has been actually used by said Nevada Humboldt Tungsten Mines Company in the payment of its debts and obligations. [943]

## II.

This defendant further represents to this Honorable Court that in equity and good conscience plaintiff is estopped by his acts and conduct from objecting to the execution of instruments of further assurance to this defendant or from in any manner questioning the validity of said agreement, Exhibit 1, or the title whereunder this defendant acquired

said real and personal property and the possession thereof. In that behalf this defendant avers:

1. That among the debts or obligations paid out of moneys received as aforesaid by Nevada Humboldt Tungsten Mines Company was a claim alleged by the plaintiff, Taylor, to be due and owing from the said corporation to him, amounting to \$9179.44. That the said plaintiff, Taylor, received and accepted in full settlement of his said claim the sum of Seven Thousand Three Hundred Thirty-four and 4/100 Dollars (\$7334.04), which amount was paid to him as follows: \$1,000 on the 8th day of January, 1920, and \$6,334.04 on the 13th day of February, 1920. That said Taylor, at the time of receiving said payments, well knew that the source of said money was the said transaction, and that this defendant, Loring, had paid in, and caused to be paid in, the said money to the said corporation on account of the purchase price of said properties as provided for in the agreement of August 16th, 1919 (Exhibit 1), and in the mortgage (Exhibit 5) made in pursuance thereof.

### III.

Further answering the said order to show cause, this defendant respectfully represents:

1. That the plaintiff, Taylor, prior to the purchase by this defendant of said properties and prior to the execution of Exhibit 1 and prior to the payment of any moneys by this [944] defendant on account of the purchase price thereof, had elected to rely upon and pursue a remedy concerning the matters and things now complained of by him,

which was wholly inconsistent with the remedy which he seeks in this action and which in equity and good conscience prevents him from seeking the relief prayed for on this order to show cause. In that behalf this defendant avers:

1. That on or about the 10th day of August, 1919, and after the period fixed by the contract, Plaintiff's Exhibit "C" for the expiration of said contract by limitation, and before this defendant entered into the contract, Exhibit 1, the plaintiff, Taylor, with full knowledge of all of the matters now relied upon and alleged by him in his complaint in this present action as having taken place prior to the said 10th day of August, 1919, declared and represented to this defendant, W. J. Loring, that he, said Taylor, had a case either for compelling the present stockholders of the Nevada Humboldt Tungsten Mines Company to assign to him control of the stock of said corporation, or as an alternative remedy, an action for heavy damages against the said stockholders.

2. That thereafter on the 16th day of August, 1919, the said plaintiff elected to and did pursue the aforesaid alternative remedy of seeking heavy damages against the parties of the second part to the said contract, Exhibit "C," by filing in this Honorable Court the aforesaid complaint against the said parties of the second part to said contract, plaintiff's Exhibit "C," wherein and whereby he set forth the identical matters and things set forth in paragraphs four (IV) to seven (VII) inclusive, of his complaint herein, the substance of which al-



legations is that the defendants had agreed to convey to him sixty-two (62) per cent of the stock of said Nevada Humboldt Tungsten Mines Company and other stock in consideration of the [945] performance of certain services to be rendered by him, and that he had proceeded to render the agreed services; but that while rendering said services he had discovered that the defendants in said action had falsely and fraudulently represented the value of said property; and that he and his associates had thereupon declined to furnish the money called for by Plaintiff's Exhibit "C"; that the Nevada Humboldt Tungsten Mines Company was and is insolvent and its stock valueless; and in lieu of said stock he asked damages to the amount of One Hundred Five Thousand Dollars (\$105,000), which sum he alleged would have represented the value of sixty-two (62) per cent of stock according to his estimate of the value thereof if the alleged representations made to him had been true.

That the fact that plaintiff had made said election was known to this defendant prior to the payment by this defendant of any part of the purchase price of said properties.

3. This defendant further alleges that the said act of the plaintiff, Taylor, in filing the said complaint was done with full knowledge of his, said Taylor's, rights and of all of the facts, and that his election to insist upon the said remedy of damages involved a negation and repudiation of the remedy which he seeks in this action.

4. This defendant, W. J. Loring, further avers

that the meeting of stockholders of said Nevada Humboldt Tungsten Mines Company called for April 27th, 1920, in deference to the restraining order of this Court has been adjourned to meet again on the 14th day of May, 1920; That it is just and equitable that the said meeting of stockholders should proceed to act favorably upon the matters and things for which it has been called and to authorize and direct the execution of additional deeds or bills of sale by way of further assurance of the [946] title of this defendant. And in that behalf this defendant avers that the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company were on the 16th day of August, 1919, indebted in a sum in excess of Two Hundred Thousand Dollars (\$200,000) and that they were unable to meet their obligations and that on the said day the plaintiff, Taylor, had made oath and had represented to this Court that the said Nevada Humboldt Tungsten Mines Company was insolvent and in substance had stated on oath that its stock was without any value whatever. That under the said conditions the Board of Directors of said corporation duly authorized and caused said corporation to enter into a contract for the transfer of certain of its properties, real and personal, to this defendant, Loring, as more fully appears by the said contract, Exhibit 1, hereunto annexed. That although the sale and transfer, so authorized to be made to this defendant, embraced by far the greater portion of the property and assets of said corporation, nevertheless it is the fact that it did not

embrace all of the property, but excepted and excluded from said transactions property belonging to the Nevada Humboldt Tungsten Mines Company of the value of several hundred dollars.

5. That the said sale to this defendant was absolutely necessary in order to pay the debts and obligations of said corporation and to save the said Nevada Humboldt Tungsten Mines Company from bankruptcy and financial ruin. That the price agreed upon was at least the full value of said properties embraced therein and was a sum which was more than One Hundred Seventy Five Thousand Dollars (\$175,000) in excess of the amount which the plaintiff, Taylor, stated on oath on said day was the value of said properties. [947]

6. That, as this defendant is advised and verily believes, the circumstances under which the said sale and transfer to this defendant was made were such that the said sale did not require any ratification by the stockholders of Nevada Humboldt Tungsten Mines Company, and that said transaction is wholly unaffected by Section 96 of the General Corporation Laws of Nevada of 1903 as amended in 1913, referred to in plaintiff's complaint, wherein it is provided that a corporation may sell and dispose of all of its property and assets when authorized by sixty (60) per cent of its stockholders at a meeting called upon fifteen days' notice. That nevertheless the said transaction was assented to, ratified and approved in the manner hereinabove set forth by stockholders of said corporation representing nine hundred forty-



one thousand eight hundred (941,800) shares out of a total of one million (1,000,000) shares of capital stock of said corporation. And this defendant avers that stockholders of said corporation owning and holding more than ninety-nine (99) per cent of all of the shares of capital stock of said corporation are ready, anxious and willing now at the said adjourned meeting (which has been called upon fifteen days' notice) to further authorize, sanction, ratify and approve the said transaction with this defendant and to authorize and direct the execution and delivery of such further deeds and bills of sale as may be proper by way of further assurance.

7. That, as this defendant is advised, it is not necessary or essential to the title of this defendant that such meeting be held or such authorization or ratification had; but nevertheless this defendant avers that it is proper and desirable that the said meeting be held and that the execution of further assurances to this defendant be at such meeting authorized and sanctioned, forasmuch as it is the fact [948] that the said David Taylor, who holds five thousand (5,000) shares upon the books of the Nevada Humboldt Tungsten Mines Company, has questioned and is questioning the validity of the bill of sale and deeds received by this defendant from the said Nevada Humboldt Tungsten Mines Company upon the technical ground that the said transaction was not authorized at a meeting held upon fifteen days' notice and said contention tends to cloud the title to said land and to injure this defendant.

## IV.

This defendant further alleges:

1. That the plaintiff, Taylor, has been guilty of gross laches in the matter of filing his complaint in this action. And in that behalf this defendant avers that well knowing that on the 16th day of August, 1919, the said Nevada Humboldt Tungsten Mines Company entered into a contract with this defendant, a copy of which is hereunto annexed, marked Exhibit 1, and well knowing that the said contract and the mortgage given pursuant thereto called for payments of money at stated times under penalty of forfeiture by this defendant, and well knowing that the outstanding liabilities and obligations of said Nevada Humboldt Tungsten Mines Company were such that the moneys called for by said contract to the extent of at least Two Hundred Thousand Dollars (\$200,000) would be required and would be immediately used when and as paid in by this defendant in discharge of obligations of said corporation and of said Tungsten Products Company, its subsidiary corporation, nevertheless said plaintiff willfully and deliberately stood by and willfully failed and neglected and refrained from beginning said suit until a total sum of Two Hundred Thirty-three Thousand Three Hundred Thirty-three and 33/100 Dollars (\$233,333.33) had [949] been paid under the said contract and until he well knew that debts exceeding Two Hundred Thousand Dollars (\$200,000) of said Nevada Humboldt Tungsten Mines Company and its said subsidiary corporation, Tungsten Products

Company, had been paid out of moneys so paid in by this defendant.

2. That in equity and good conscience plaintiff is estopped and debarred by his laches and conduct aforesaid from maintaining this action or from obtaining any relief thereunder, and particularly, from obtaining any injunction under the order to show cause herein which will prevent said Nevada Humboldt Tungsten Mines Company from giving to this defendant further assurances of the title to the real and personal property pursuant to the said agreement, Exhibit 1.

V.

This defendant avers that said bill is wholly without equity, and moves that the same be dismissed for want of equity.

WHEREFORE, this defendant prays that the said order to show cause be denied; that the temporary restraining order heretofore issued herein be discharged and set aside; and that this defendant have such further relief as is meet and conformable to equity.

JOHN F. DAVIS.

CHARLES S. WHEELER and

CHARLES S. WHEELER, Jr.

Solicitors for Defendant, W. J. Loring.

BOOTH B. GOODMAN,

Of Counsel. [950]

State of California,

City and County of San Francisco,—ss.

W. J. Loring, being first duly sworn, deposes and says: That he is one of the defendants in the above-

entitled action; that he has read the foregoing "Response of W. J. Loring to Order to Show Cause" and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and that as to those matters, he believes it to be true.

W. J. LORING.

Subscribed and sworn to before me this 13th day of May, 1920.

[Seal]

JOHN McCALLAN,  
Notary Public in and for the City and County of  
San Francisco, State of California. [951]

**Exhibit No. 1.**

THIS CONTRACT, made and entered into this sixteenth day of August, one thousand nine hundred and nineteen, by and between Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and Tungsten Products Company, also a Nevada Corporation, the parties of the first part, and W. J. Loring, of the City and County of San Francisco, State of California, the party of the second part,

**WITNESSETH:**

That the parties of the first part, for and in consideration of the sum of One (\$1.00) Dollar, lawful money of the United States, to them paid by the party of the second part, the receipt whereof is hereby admitted, and in consideration of the moneys to be paid by the party of the second part

at the times and in the manner hereinafter provided, do by these presents covenant and agree with the party of the second part to sell, assign, grant, convey and set over unto the said party of the second part, and his heirs and assigns, and the party of the second part hereby agrees to buy all of the real and personal property now owned by the parties of the first part, including all rights, easements, contracts for power, capital stock of other corporations owned by the parties of the first part, or by either of them, and in brief every article of real, personal or mixed property, of every kind and description, now owned by the parties of the first part, or either of them (excepting only the books and corporate records of the parties of the first part), and expressly including the following real and personal property, to wit:

#### REAL PROPERTY.

All those certain mining claims and mineral bearing lodes, veins and deposits situated in an unknown mining district, [952] in the County of Pershing, formerly County of Humboldt, State of Nevada, described as follows:

The Gross Mine No. 2, Gross Mine No. 3, White Rock Mine, and Sky High, lode mining claims, situated about seven miles northwest of Mill City station, on the Southern Pacific Railroad, copies of the location notices of which were duly recorded in the office of the County Recorder of said Humboldt County, in Book "S" of Notices, at page 502, reference to which said records for purposes of greater certainty of description is hereby expressly made,



being the same property described in that certain Deed thereof to Nevada Humboldt Tungsten Mines Company, a Nevada corporation, dated February 17, 1917, and recorded in Book 53 of Deeds, page 146, records of the County Recorder of said Humboldt County, State of Nevada;

Together with all the dips, spurs and angles, leads, lodes, metals, ores, gold, silver and tungsten bearing quartz rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed;

Also, that certain lot, piece or parcel of land situated in the County of Pershing, (formerly the County of Humboldt) State of Nevada, and described as follows, to wit:

Beginning at the East quarter corner of Section Twenty-seven (27), Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence South, along the East line of said Section, to the Southwest corner thereof; thence west, along the South line of said Section, to the South quarter corner thereof; thence northwesterly, in a straight line, to the place of beginning, containing eighty (80) acres, according to the United States Public Surveys; together with all the rights, privileges and appurtenances thereunto belonging or in any wise [953] appertaining. Being the same ground deeded to the Nevada Humboldt Tungsten Mines Company, a Nevada Corporation, in that certain deed, dated April 25, 1918, recorded in Book 53, page 76, of Deeds, rec-

ords of the office of the County Recorder of said County of Humboldt, State of Nevada;

Also, that certain piece or parcel of land lying, situate and being in the County of Pershing (formerly County of Humboldt, State of Nevada, more particularly described as follows:

Beginning at the Southeast corner of Section Twenty-seven (27), Township Thity-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence North one Hundred feet; thence east five hundred (500) feet; thence south six hundred (600) feet; thence west six hundred (600) feet; thence north five (500) hundred feet; thence east one hundred (100) feet; to the place of beginning. Being the same property described in that certain Deed thereof to Tungsten Products Company, a Nevada corporation, described in Book 1 of Deeds, page 18, official records in the office of the County Recorder of Pershing County, State of Nevada, to which said records reference is hereby expressly made; together with the mill, plant, improvements, tenements, and hereditaments thereon and all the rights, privileges, easements and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed;

Also, that certain easement for the flow of tailings from the mill, or any other plant or structure, on, or that may be constructed on, said last above described tract flowing on or over the northeast quarter of Section Thirty-five (35), Township Thirty-four (34) North, Range Thirty-four (34)

East, Mt. Diablo Base and Meridian; together with all the rights, privileges and franchises thereto incident, appendant, and appurtenant, or [954] therewith usually had and enjoyed. Being the same easement described in that certain Deed thereof recorded in Book 1 of Deeds, page 20, official records in the office of the County Recorder of the County of Pershing, State of Nevada, to which said record reference is hereby expressly made;

#### PERSONAL PROPERTY.

And also, all of the personal property of every kind and description owned by the parties of the first part and each of them, including all of the issued capital stock of the Mill City Development Company owned by said parties of the first part, or either of them, with the Certificates representing the same properly endorsed in blank, and all ore in demps, at the mill or in the mine; all buildings erected upon any of the lands hereinbefore described; all tungsten concentrates including all concentrates in the mill or elsewhere owned by either of the parties of the first part and all concentrates in the possession of the party of the second part, the Pacific Tungsten Company, or Wells Fargo Nevada National Bank of San Francisco, and including all moneys due upon concentrates heretofore sold by either of the parties of the first part to the Western Ore Purchasing Company of Reno, Nevada; all mills, machinery, concentrating tables, engines, compressors, motors, belting, cables, hoists and every other article of machinery or equipment which is now situated on the property of the par-



ties of the first part or either of them above described, or in the concentrating mill thereon, or elsewhere; all mine cars, track, buckets, skips, drilling steel, jackhammers, stoping or drilling machinery of every kind and description and all of the tools and implements used in or about the mine and mill owned by the parties of the first part, or either of them, including all picks, shovels, blacksmith tools and equipment, carpenters and millwrights' tools; all wagons and [955] trucks; all mine and mill supplies of every kind, wheresoever situated, including powder; all boarding-house and bunk-house furnishings and equipment; and in brief every article of personal property including credits owned by the parties of the first part, or either of them, excepting only their books, corporate seal, and records, and except any item of cash in bank above the amount of \$195.46, and except supplies now at Mill City amounting to \$1106.25 (being the following items: Baker, Hamilton & Pacific Co., \$3.27, \$25.78, and \$19.10; The Gallagher Machinery Co., \$120.00; The Giant Powder Co., \$813.40; Allis-Chalmers Mfg. Co., \$353.60, and the Stearns-Roger Co., \$71.10).

The parties of the first part also agree to sell, assign, transfer and set over unto the said party of the second part, and his assigns, all of their right, title, interest, claim or demand in, to, or of any and all moneys which may hereafter be found to be due to them, or to either of them, from the Government of the United States by reason of any claim for relief which they, or either of them, have filed

or presented under that certain act of Congress of the United States known as the War Minerals Relief Act.

The said party of the second part hereby covenants and agrees to pay or cause to be paid to the parties of the first part as the full purchase price of the entire properties of the parties of the first part as above described, including said right to moneys by reason of said War Minerals Relief Act, the sum of Three Hundred Thirty-three Thousand Three Hundred Thirty-three and Thirty-three One-Hundredths (\$333,333.33) Dollars, in lawful money of the United States at the times and in the manner following:

The sum of Fifty Thousand (\$50,000.00) Dollars on or before September 1st, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars [956] on or before the first day of October, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars on or before the fifteenth day of November, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars on or before the twenty-seventh day of December, 1919;

The further sum of *Thirty Thousand* Three Hundred Thirty-three Dollars and Thirty-three cents (\$33,333.33) on or before the 4th day of February, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of May, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of August, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of November, 1920; and

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of February, 1921.

All payments of the installments of the purchase price above set forth shall be made in cash, or by certified check, or by cashier's check, or bank telegraph transfer, to the credit of the parties of the first part, at the First National Bank of Lovelock, Nevada, by payment thereof to its cashier, J. T. Goodin, who is trustee for the Creditors of said parties of the first part, who shall, first pay off the loan of Ten Thousand (\$10,000.00) Dollars procured to pay off labor claims, and shall thereafter pay out said installments so received to said respective creditors in accordance with his trust, but the payment thereof by said party of the second part to said Cashier and Trustee, or his successor as such, shall be a complete performance by said party of the second part of the payment of each installment so paid, and said party of the second part shall not be obligated to ascertain [957] whether said payments by said Cashier or Trustee shall have been properly distributed.

IT IS FURTHER UNDERSTOOD AND AGREED that the said party of the second part shall receive credit upon the installment of the pur-

chase price falling due on the first day of September, 1919, for the sum of Thirteen Thousand One Hundred Fifty-eight and Fifty-two one-hundredths (\$13,158.52) Dollars, being the amount of a certain claim against the Nevada Humboldt Tungsten Mines Company assigned by Rochester Mines Company, a Nevada Corporation, to the party of the second part, and also for the sum of Four Thousand Two Hundred Eleven and Sixty-two One-hundredths (\$4,211.62) Dollars, being the amount of a certain claim against the Nevada Humboldt Tungsten Mines Company, assigned by Rochester Combined Mines Company, a Nevada corporation, to the party of the second part; said claims or accounts now being the property of the party of the second part and due and owing to him.

IT IS EXPRESSLY COVENANTED AND AGREED that the party of the second part shall, upon the execution of this contract, have immediate possession of the properties above described, and all thereof and the right to conduct and operate said properties, and extract, ship, reduce and sell ore and concentrate therefrom, and shall apply the net proceeds of any concentrates derived from such operation by the party of the second part, first, to the payment of the debts of the corporation herein set forth, obtaining credit therefor upon the installments of the purchase price in the manner herein set forth, and thereafter shall have the right to apply such net proceeds upon said installments of the purchase price as may then remain.

IT IS FURTHER AGREED that the party of the second part, or his assigns, shall have the right to collect all of the accounts and bills receivable, due to said parties of the first part, [958] or either of them, and to sell any of the tungsten concentrates covered by this agreement and any tungsten concentrates produced through the operation by him of any of said properties, and shall apply any moneys collected thereunder, whether out of account due said parties of the first part, or either of them, or collected from bills receivable, due, or otherwise, and all moneys derived from the net proceeds of concentrates so sold shall be paid over and apply upon the purchase price of said properties and in payment of the installments as the same become due and said party of the second part shall receive credit therefor upon the next installment falling due after the payment thereof.

In case of any default in the payment of any of said installments of the purchase price when due, then, at the option of said parties of the first part, this agreement shall terminate and be of no further force and effect, and said parties of the first part shall not be obligated to do anything further thereunder, and they shall be entitled to retake possession of said real property, together with any personal property thereon, and to retain any payments hereunder theretofore made as full and liquidated damages for the failure of the party of the second part to complete this agreement, and for rentals for the use and occupation thereof, and for damages caused by the extraction of ore therefrom and its



change of appearance resulting therefrom and otherwise, but the option set forth in this paragraph shall not be deemed to abridge any right to which the parties of the first part may be entitled under the provisions of this agreement.

The parties of the first part further covenant that within seven days from the date of this contract they will make [959] and execute and deliver to the party of the second part or his assigns, good and sufficient deeds conveying all of the real property owned by the parties of the first part and each of them, and will also make, execute and deliver good and sufficient bills of sale conveying all of the personal property owned by the parties of the first part and each of them, and also good and sufficient assignments of the various contract, franchises, rights or easements and capital stock of other corporations which the parties of the first part or either of them may own. Simultaneously with the delivery of said deeds to the party of the second part, by the parties of the first part, the party of the second part shall make, execute and deliver to the order of said parties of the first part, a properly executed mortgage containing the usual covenants covering the real property described in the deeds from each of said parties of the first part to the party of the second part, securing to said parties of the first part the payment of the installments of the purchase price of all of the properties at the dates and in the place set forth in this agreement. Said mortgage shall also contain a clause

covering the liquidation of creditor's claims as herein set forth.

Time shall be of the essence of this agreement but there shall be a five days' grace allowed on the date set for the payment of each installment before the party of the second part shall be considered to be in default thereon.

It is further stipulated and agreed that this contract shall run in favor of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties; and it is further agreed that the party of the second part shall have the right and power to assign this contract.

IN WITNESS WHEREOF the said Nevada Humboldt Tungsten [960] Mines Company has by resolution of its Board of Directors caused its corporate name to be hereto subscribed by its President and Secretary and its corporate seal to be hereto affixed and said Tungsten Products Company has also, by resolution of its Board of Directors, duly adopted, caused its corporate name to be hereto subscribed by its President and Secretary and its corporate seal to be hereto affixed, and the party of the second part has hereunto set his hand, in duplicate, the day and year first above written.

NEVADA HUMBOLDT TUNGSTEN  
MINES COMPANY,

By L. A. FRIEDMAN,  
President.

[Corporate Seal]

Attest: R. NENZEL,  
Secretary.

TUNGSTEN PRODUCTS COMPANY,

By L. A. FRIEDMAN,

President.

[Corporate Seal]

Attest: R. NENZEL,

Secretary.

W. J. LORING.

I hereby approve the foregoing contract on behalf of the Creditors of the parties of the first part and consent to the same.

J. T. GOODIN,

Trustee for Creditors. [961]

**Exhibit No. 2.**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, being the owners of more than ninety-five per cent (95%) of the total authorized capital stock of the Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby approve and ratify the foregoing and attached contract made and entered into by said Nevada Humboldt Tungsten Mines Company on the one part and W. J. Loring on the other part; and we do hereby ratify, approve and confirm the acts of the President and Secretary of the above corporation in executing the said contract on behalf of said Nevada Humboldt Tungsten Mines Company.

IN WITNESS WHEREOF, we have hereunto set our hands this sixteenth day of August, A. D. 1919.



L. A. Friedman .....owning 91,640 shares  
Lena J. Friedman.....owning 250,000 shares  
R. Nenzel .....owning 102,000 shares  
G. K. Hinch.....owning 10,000 shares  
H. J. Murrish.....owning 101,000 shares  
C. H. Jones .....owning 100,000 shares  
John G. Huntington.....owning 50,000 shares

By R. Nenzel, Atty in Fact.

Frank Carlstrom.....owning 60,000 shares  
C. W. Poole.....owning 219,160 shares  
V. A. Twigg.....owning 3,000 shares  
J. T. Goodin.....owning 5,000 shares

I, R. Nenzel, Secretary of Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby certify that the persons whose names are signed to the attached ratification of stockholders of the Nevada Humboldt Tungsten Mines Company are the owners of more than ninety-five (95%) per cent of the total authorized capital stock of said corporation standing in their names on the books of said corporation on this date, and are each the owners of the number of shares set opposite their respective names. [962]

IN WITNESS WHEREOF I have hereunto set my hand as Secretary of said Nevada Humboldt Tungsten Mines Company this 16th day of August, 1919, and affixed hereto the corporate seal of said corporation.

[Corporate Seal] R. NENZEL,  
Secretary of Nevada Humboldt Tungsten Mines  
Company, a Nevada Corporation. [963]

**Exhibit No. 3.**

**KNOW ALL MEN BY THESE PRESENTS:**

That the undersigned, being the owners of more than ninety-five per cent (95%) of the total authorized capital stock of the Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby approve and ratify the foregoing and attached contract made and entered into by said Tungsten Products Company on the one part and W. J. Loring on the other part; and we do hereby ratify, approve and confirm the acts of the President and Secretary of the above corporation in executing the said contract on behalf of said Tungsten Products Company.

IN WITNESS WHEREOF, we have hereunto set our hands this, the sixteenth day of August, A. D., 1919.

L. A. Friedman.....	owning	1,000 shares
L. A. Friedman, Trustee....	owning	94,680 shares
H. J. Murrish.....	owning	1,000 shares
R. Nenzel .....	owning	1,000 shares
C. H. Jones.....	owning	1,000 shares
John G. Huntington.....	owning	1,000 shares

R. Nenzel, Atty. in Fact.

I, R. Nenzel, Secretary of the Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby certify that the persons whose names are signed to the attached ratification of stockholders of Tungsten Products Company are

the owners of more than ninety-five (95%) per cent of the total authorized capital stock of said corporation standing in their names on the books of said corporation on this date and are each the owners of the number of shares set opposite their respective names.

IN WITNESS WHEREOF I have hereunto set my hand as Secretary of said Tungsten products Company this 16th day of August, 1919, and affixed hereunto the corporate seal of said corporation.

[Corporate Seal] R. NENZEL,  
Secretary of Tungsten Products Company, a Nevada Corporation. [964]

**Exhibit No. 4.**

(Resolution of Stockholders of Nevada Humboldt Tungsten Mines Company, passed and adopted at Special Meeting of Stockholders held on August 23d, 1919.)

WHEREAS, the President and Secretary of this Company did, on the 16th day of August, 1919, execute on behalf of this corporation, a certain contract and agreement made between this Company and Tungsten Products Company, on the one part, and W. J. Loring of the City and County of San Francisco, State of California on the other part, which contract provided for the sale of this Company's property to said W. J. Loring, jointly with the property of the Tungsten Products Company, for a consideration of \$333,333.33 be, and the same is hereby

ratified, confirmed and approved, and the acts of said officers are hereby adopted as the acts of this corporation as fully to all intents and purposes as if the said officers had been previously authorized to enter into and execute said contract and agreement on behalf of this Company by a Resolution of its stockholders duly adopted.

FURTHER RESOLVED, that the action of the Board of Directors of this corporation authorizing and directing the said officers to execute said contract on behalf of this corporation be, and the same is hereby ratified and approved and the act of said Board of Directors in this behalf is hereby adopted as the act of the stockholders of this Company. [965]

(Resolution of Stockholders of Nevada Humboldt Tungsten Mines Company Continued.)

WHEREAS, W. J. Loring has made an offer to this Company, jointly with the Tungsten Products Company to purchase the real and personal property of this corporation and the real and personal property of said Tungsten Products Company for the sum of \$333,333.33, and

WHEREAS, the Board of Directors of this Company, have by Resolution, recommended that this Company accept the said offer and sell to W. J. Loring the real and personal property of this Company upon the terms stated in the contract here exhibited and fully set forth in the Minutes of the special meeting of the Board or Directors of this Company, held on the 16th day of August, 1919, and

WHEREAS, this Company and said Tungsten Products Company, which is a subsidiary corporation to this Company, has become heavily indebted to various creditors and have not sufficient funds to meet the demands of said creditors, and it appears to us to be for the best interests of this Company, and its creditors, to accept the offer of said Loring, and to sell said property to him, and

WHEREAS, it appears upon inspection of the sale contract executed by officers of this Company and said W. J. Loring that more than ninety per cent of the outstanding capital stock of this corporation has already, in writing, ratified and approved the said contract and the proposed sale of this Company's property, and

WHEREAS, we, the stockholders, deem that the offer of \$333,333.33 made for the property, in view of the indebtedness of the Company and threatened law suits and other matters which tend to harass the company and make a sale of its property at a higher figure impossible, is a reasonable one. [966]

RESOLVED, that the President and Secretary of this Company be, and they are hereby directed, authorized and empowered to make, execute and deliver to said W. J. Loring, good and sufficient Deeds and Bills of Sale to all of the properties of this Company described in said contract and any and all other rights, assignments and conveyances which may be necessary to properly convey the property of this corporation described in said contract to said Loring, under the terms of and as provided in said contract.



FURTHER RESOLVED, that the Board of Directors of this corporation be, and they are hereby ordered and directed to cause the said contract with said W. J. Loring to be fully carried out and performed on the part of this corporation. [967]

(Resolution of Stockholders of Nevada Humboldt Tungsten Mines Company—Continued.)

RESOLVED, that the action of L. A. Friedman, as Trustee for the stockholders of this corporation in voting 94,680 shares of the capital stock of the Tungsten Products Company in favor of the sale of the property of said Tungsten Products Company to W. J. Loring at a meeting of the stockholders of said Tungsten Products Company, held August 16th, 1919, be, and the same is hereby ratified, approved and confirmed and,

FURTHER RESOLVED, that the stockholders of this corporation do hereby adopt the said act of said L. A. Friedman, Trustee, as their own act and deed. [968]

(Resolution of Stockholders of Tungsten Products Company, passed and adopted at Special Meeting held on the 16th day of August, 1919.)

WHEREAS, the President and Secretary of this Company did, on the 16th day of August, 1919, execute on behalf of this corporation a certain contract and agreement made between this Company and Nevada Humboldt Tungsten Mines Company, on the one part, and W. J. Loring of the City and County of San Francisco, State of California, on the other part, which contract provided for the sale

of this company's property to said W. J. Loring, jointly with the property of the Nevada Humboldt Tungsten Mines Company, for a consideration of \$333,333.33, be, and the same is hereby ratified, confirmed and approved, and the acts of said officers are hereby adopted as the acts of this corporation as fully to all intents and purposes as if the said officers had been previously authorized to enter into and execute said contract and agreement on behalf of this Company by a Resolution of its stockholders duly adopted.

FURTHER RESOLVED, that the action of the Board of Directors of this corporation authorizing and directing the said officers to execute said contract on behalf of this corporation be, and the same is hereby ratified and approved and the act of said Board of Directors in this behalf is hereby adopted as the act of the stockholders of this Company. [969]

(Resolution of Stockholders of Tungsten Products Company—Continued.)

WHEREAS, W. J. Loring has made an offer to this Company, jointly with the Nevada Humboldt Tungsten Mines Company to purchase the real and personal property of this corporation and the real and personal property of said Nevada Humboldt Tungsten Mines Company for the sum of \$333,-333.33 and,

WHEREAS, the Board of Directors of this Company, have, by Resolution, recommended that this Company accept the said offer and sell to W. J.

Loring the real and personal property of this Company upon the terms stated in the contract here exhibited and fully set forth in the Minutes of the special meeting of the Board of Directors of this Company, held on the 16th day of August, 1919, and

WHEREAS, this Company and said Nevada Humboldt Tungsten Mines Company, has become heavily indebted to various creditors and have not sufficient funds to meet the demands of said creditors, and it appears to us to be for the best interests of this Company, and its creditors, to accept the offer of said Loring and to sell said property to him, and

WHEREAS, it appears upon inspection of the sale contract executed by officers of this Company and said W. J. Loring that more than ninety per cent of the outstanding capital stock of this corporation has already in writing ratified and approved the said contract and the proposed sale of this Company's property, and,

WHEREAS, we, the stockholders, deem that the offer of \$333,333.33 made for the property, in view of the indebtedness of the Company and threatened law suits and other matters which tend to harass the Company and make a sale of its property at a higher figure impossible, is a reasonable one. [970]

RESOLVED, that the President and Secretary of this Company be, and they are hereby directed, authorized and empowered to make, execute and deliver to said W. J. Loring, good and sufficient Deeds and Bills of Sale to all of the properties of this



Company described in said contract and any and all other rights, assignments and conveyances which may be necessary to properly convey the property of this corporation described in said contract to said Loring, under the terms of and as provided in said contract.

FURTHER RESOLVED, that the Board of Directors of this corporation be, and they are hereby ordered and directed to cause the said contract with said W. J. Loring to be fully carried out and performed on the part of this corporation. [971]

**Exhibit No. 5.**

**MORTGAGE TO SECURE PURCHASE PRICE.**

THIS INDENTURE, made and entered into the 23d day of August, in the year of our Lord One Thousand Nine Hundred and Nineteen, by and between W. J. LORING, of The City and County of San Francisco, State of California, the party of the first part, and NEVADA TUNGSTEN MINES COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and TUNGSTEN PRODUCTS COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Nevada, the parties of the second part,

**WITNESSETH:**

WHEREAS, the party of the first part has this day bought from the parties of the second part, and the parties of the second part have this day

sold to the party of the first part, and to his heirs and assigns forever, all the property hereinafter described, together with other property, for the sum of Three Hundred and Thirty-three Thousand Three Hundred and Thirty-three and 33/100 Dollars (\$333,333.33), in lawful money of the United States, which said sum of money said party of the first part has obligated himself to pay to the parties of the second part, in accordance with the provision of that certain contract in writing, dated the 16th day of August, 1919, between the parties of the second part herein as parties of the first part therein, and the party of the first part herein as the party of the second part therein, in installments, at the times, and in the manner, and in accordance with the provisions of said contract in writing of August 16th, 1919.

NOW, THEREFORE, in consideration of the premises, and in consideration of the sum of One Dollar in hand paid to the party of the first part herein by the parties of the second part herein, the receipt whereof by the party of the [972] first part herein from the parties of the second part herein is hereby acknowledged, and for other good and valuable considerations him hereunto moving, the party of the first part herein does by these presents grant, bargain, sell and convey unto the parties of the second part herein, and to their successors and assigns forever, all those certain pieces or parcels of land situated in the County of Pershing, formerly the County of Humboldt, of Nevada, more particularly described as follows:

The Gross Mine No. 2, Gross Mine No. 3, White Rock Mine, and Sky High, lode mining claims, situated about seven miles northwest of Mill City station, on the Southern Pacific Railroad, copies of the location notices of which were duly recorded in the offices of the County Recorder of said Humboldt County, in Book "S" of Notices, at page 502, reference to which said records for purpose of greater certainty of description is hereby expressly made, being the same property described in that certain Deed thereof to Nevada Humboldt Tungsten Mines Company, a Nevada Corporation, dated February 17, 1917, and recorded in Book 53 of Deeds, page 146, records of the County Recorder of said Humboldt County, State of Nevada;

Together with all the dips, spurs and angles, leads, lodes, metals, ores, gold, silver and tungsten bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed;

Also that certain lot, piece or parcel of land situated in the County of Pershing, (formerly the County of Humboldt) State of Nevada, and described as follows, to wit:

Beginning at the East quarter corner of Section Twenty-seven (27) Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence South, along the East line of said Section, to the Southwest corner thereof; thence West, along the South line of said Section, to the South quarter corner thereof; thence

northwesterly, in a straight line, to the place of beginning, containing eighty (80) acres, according to the United States Public Surveys, together with all the rights, privileges and appurtenances thereunto belonging or in anywise appertaining, Being the same ground deeded to the Nevada Humboldt Tungsten Mines Company, a Nevada Corporation, in that certain deed dated April 25, 1918, recorded in Book 53, page 76, of Deeds, records of the office of the County Recorder of said County of Humboldt, State of Nevada;

Also, that certain piece or parcel of land lying, situate and being in the County of Pershing (formerly County of Humboldt), State of Nevada, more particularly described as follows:

Beginning at the Southwest corner of Section Twenty-seven (27), Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence North one Hundred feet; thence east five hundred (500) feet; thence south six hundred (600) feet; thence west six hundred (600) feet; thence north five (500) hundred feet; thence east [973] one hundred (100) feet, to the place of beginning, being the same property described in that certain Deed thereof to Tungsten Products Company, a Nevada corporation, described in Book 1 of Deeds, page 18, official records in the office of the County Recorder of Pershing County, State of Nevada, to which said record reference is hereby expressly made, together with the mill, plant, improvements, tenements, and hereditaments thereon, and all the rights, privileges, easements and fran-

chises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed;

Also that certain easement for the flow of tailings from the mill, or any other plant or structure on, or that may be constructed on, said last above-described tract flowing on or over the northeast quarter of Section Thirty-five (35) Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; together with all the rights, privileges and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed. Being the same easement described in that certain Deed thereof recorded in Book 1 of Deeds, page 20, official records in the office of the County Recorder of the County of Pershing, State of Nevada, to which said record reference is hereby expressly made;

Together with all mills, buildings, improvements and equipment erected upon or in any of the land hereinbefore described; and including all property thereon or therein which constitutes real property under the provisions of the laws of the State of Nevada in such case made and provided.

This conveyance is intended as a mortgage, to secure the payment of Three Hundred Thirty-three Thousand, Three Hundred and Thirty-three and 33/100 (\$333,333.33) Dollars, in lawful money of the United States, as the purchase price of said and other property, upon the following installments and at the following times, to wit:

\$50,000 thereof on or before the 1st day of  
September, 1919.



\$50,000 thereof on or before the 1st day of October, 1919.

\$50,000 thereof on or before the 15th day of November, 1919.

\$50,000 thereof on or before the 28th day of December, 1919.

\$33,333.33 thereof on or before the 4th day of February, 1920.

\$25,000.00 thereof on or before the 4th day of May, 1920.

\$25,000.00 thereof on or before the 4th day of August, 1920.

\$25,000.00 thereof on or before the 4th day of November, 1920, and

\$25,000.00 thereof on or before the 4th day of February, 1921.

—all of said payments of installments of said purchase price to be made in cash, or by certified check, or by Cashier's check, or bank telegraph transfer, to the credit of the parties of the first part, at the First National Bank of Lovelock, Nevada, by payment thereof to its Cashier, J. T. Goodin, who is trustee for certain creditors of said parties of the second part herein, who shall, first, pay off the loan of \$10,000 procured by him to pay off labor claims, and shall thereafter pay out said installments so received to the respective creditors [974] represented by him in accordance with his trust, but the payment thereof by said party of the first part herein to said Cashier and Trustee, or to his successors as such, shall be a complete performance by said party of the first part herein of the pay-

ment of each installment so paid, and said party of the first part herein shall not be obligated to ascertain whether said payments of said Cashier or Trustee have been properly distributed; according to the conditions of that certain written contract dated the 16th day of August, 1919, above mentioned, and these presents shall be void, if such payments be made according to the tenor and effect thereof.

It is hereby understood and agreed, that the party of the first part shall, while this mortgage continues in force and effect and until the debt secured thereby shall be discharged, cause to be performed upon each of the unpatented mining claims in the property above described, the annual assessment work necessary to protect the same under the provisions of the Statutes of the United States and of the State of Nevada in such case made and provided;

IT IS FURTHER UNDERSTOOD AND AGREED, that the party of the first part herein shall have the right to conduct and operate said property, during the existence of this mortgage and until the debt secured thereby shall have been extinguished, to extract, ship, reduce and sell ore and concentrates therefrom, and shall apply the net proceeds of any concentrates derived from said operations, by him first, to the payment of the debt of the parties of the second part herein as set forth in the said written contract of August 16th, 1919, obtaining credit therefor upon the installment of the purchase price in the manner

therein set forth, and thereafter shall have the right to apply such net proceeds upon said installment of the purchase price as will then remain, and shall have the right of necessary repair, renewal and replacement of machinery, tools, and equipment while so doing with machinery, tools and equipment of equal [975] make and value, but all work and operations conducted by him upon or in said property or any part thereof shall be performed and done in a good and miner-like manner: and neither said parties of the second part, nor said property, nor any of them, shall be liable for the cost or expense of operating or conducting mining, milling, or reduction works on or in said property, or for labor employed thereon or therein or material furnished thereon or therein, at the instance or request of said party of the first part herein or of his heirs, administrators, or assigns, but said party of the first part herein, his heirs, administrators and assigns shall be responsible for such costs and expenses;

IT IS FURTHER UNDERSTOOD AND AGREED, that said party of the first part herein will cause to be recorded in the proper recording office and posted in the proper places upon said property any notices requested by the parties of the second part herein, that may be necessary to protect said property from liens under the provisions of the Statute in such case made and provided;

IT IS FURTHER UNDERSTOOD AND AGREED, that party of the first part herein will pay, or cause to be paid, all taxes that may be

levied upon said property by national, state, county, or district authority, during the continuance of this mortgage, and until the debt secured thereby shall have been extinguished;

IT IS FURTHER UNDERSTOOD AND AGREED, that said party of the first part herein shall cause the buildings upon said property to be insured against fire in reputable fire insurance companies authorized and doing business under the provisions of the laws of the United States and of the State of Nevada, and having the right to operate in said State of Nevada, in a sum of not less than \$82,950.00, and shall apportion said amount of insurance upon said property as follows: mill buildings, not less than \$35,000; mill machinery, not less than \$40,000; superintendent's residence, [976] not less than \$1,000; boarding-house and fittings, not less than \$800; twelve cottages now upon said property, not less than \$1,800; compressor's building, not less than \$400; compressor's machinery, not less than \$1,500; gallows-frame on S. P. ground, not less than \$300; hoist-building at S. P. shaft, not less than \$100; hoist engine at S. P. Shaft, not less than \$500; gallows-frame, Carlson, not less than \$500; blacksmith's shop, not less than \$300; office and warehouse not less than \$750.

It is understood and agreed, that, in case said party of the first part herein shall fail or neglect to pay any of said taxes when due, or fail or neglect to cause to be performed any of said annual assessment work required by the provisions of the Statutes of the United States or the State of Ne-

vada, when necessary, the parties of the second part herein, or either of them, shall have the right, at their option, to pay said taxes, or fire insurance premiums upon the above insurance, or to cause said assessment work to be performed and to advance the money necessary therefor, and these presents shall constitute a security to them for the repayment of any such advances, as well as for the payments of the installments of the purchase price of said property hereinbefore set forth.

IT IS UNDERSTOOD AND AGREED, that if any installment of the purchase price hereinbefore set forth shall not be punctually paid when the same shall become due and payable, and for five days thereafter as in said written contract of August 16th, 1919, and in this mortgage mentioned, then and in such case the whole of the balance of said purchase price then remaining unpaid shall be taken to be wholly due and payable, at the option of said parties of the second part herein, or of either of them, and proceedings may forthwith be had by said parties of the second part, their successors and assigns, for the recovery of the same, either by suit on said contract of August 16th, 1919, or on this mortgage, anything in said contract or in this [977] indenture contained to the contrary thereof notwithstanding. And in any suit or other proceedings that may be had for the recovery of said balance of said purchase price, on either said contract or this mortgage, it shall and may be lawful for said parties of the second part herein, their successors or assigns, to include in the



judgment that may be recovered, such reasonable counsel fees and charges of attorneys and counsel employed in such foreclosure suit as shall be fixed by the Court having jurisdiction of such foreclosure suit, as well as all payments that the parties of the second part herein, or either of them, or their successors or assigns, may make for their security, or for the security of either of them, on account of taxes or moneys expended for the payment of fire insurance premiums, or for annual assessment work upon said premises, as hereinbefore mentioned.

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal, the day and year herein first above written.

W. J. LORING.

Duly acknowledged before Booth B. Goodman, Notary Public, Aug. 23, 1919.

[Endorsed]: No. B-7. In the District Court of the United States, for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, etc., et al., Defendants. Response of W. J. Loring to Order to Show Cause. Filed May 15th, 1920. T. J. Edwards, Clerk. John F. Davis, Charles S. Wheeler and Charles S. Wheeler, Jr., Attorneys for Deft. Loring. Nevada Bank Building, San Francisco. [978]

In the United States District Court, in and for the  
District of Nevada.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING, C.  
W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, G. K.  
HINCH, J. T. GOODIN, V. A. TWIGG, J.  
C. HUNTINGTON and LENA J. FRIED-  
MAN, Individually,

Defendants.

**Separate Answer of Nevada Humboldt Tungsten  
Mines Company et al.**

Now come the defendants, Nevada Humboldt  
Tungsten Mines Company, Tungsten Products  
Company, Mill City Development Company, C. W.  
Poole, R. Nenzel, H. J. Murrish, L. A. Friedman,  
C. H. Jones, G. K. Hinch, J. T. Goodin, V. A.  
Twigg, J. C. Huntington, and Lena J. Friedman, in  
the above-entitled action and for their separate  
answer to plaintiff's complaint on file herein admit,  
deny and allege as follows, to wit:

**I.**

These defendants admit the allegations contained  
in paragraph numbered I of plaintiff's com-

plaint, except as to the citizenship and residence of plaintiff, and of defendant, W. J. Loring, and as to them, said defendants have not sufficient knowledge or information upon which to base a belief. [979]

## II.

These defendants have not sufficient knowledge or information as to the matters alleged in paragraph II of said complaint upon which to base a belief, except that these defendants admit the suit is not a collusive one.

## III.

These defendants admit the allegations of paragraph III of said complaint, but in this connection allege that the said contract Exhibit "A" expired by limitation on July 16th, 1919.

## IV.

These defendants admit the allegations of paragraph IV of said complaint, but in this connection allege that the said contract Exhibit "B" expired by limitation on June 16th, 1919.

## V.

Respecting the allegations of paragraph V of said complaint, these defendants admit that sometime shortly after the making and execution of the said contract of January 16, 1919, Exhibit "B" attached to plaintiff's complaint, one Howland Bancroft, a mining engineer, at the special instance and request of the plaintiff, made an examination of the mines, mining property and mining rights of the Nevada Humboldt Tungsten Mines Company, which said report was communicated to the

plaintiff, and that said report showed development which then existed upon said mining property of said Nevada Humboldt Tungsten Mines Company, and that said report showed that about nine thousand tons of scheelite ore, of an average of 1.75% tungstic acid had [980] been developed, placed in sight, blocked out, and made ready for mining in said mining property of said Nevada Humboldt Tungsten Mines Company. That as to whether said report showed the amount of development which then existed upon said mining property these defendants have not sufficient knowledge or information upon which to base a belief; admit that at all of the times mentioned in said complaint the defendants, Murrish, Nenzel, L. A. Friedman and Jones, were directors of the Nevada Humboldt Tungsten Mines Company, and the Tungsten Products Company; deny that defendant Poole had then, or at all times thereafter, or until the execution of the said conveyances by the defendant corporations to the defendant W. J. Loring, general charge of all mining or milling operations of said Nevada Humboldt Tungsten Mines Company, and its subsidiary, Tungsten Products Company; deny that the fact and truth concerning said mines and mining claims of the Nevada Humboldt Tungsten Mines Company, or of the development work which had been performed or the new development work in progress on and within said mines, mining claims and mining rights of said Nevada Humboldt Tungsten Mines Company, were at all or any of the times mentioned in

the complaint peculiarly within the knowledge or information of any of the individual defendants, except Poole, Nenzel and L. A. Friedman, and admit that on or about the month of March, 1919 plaintiff informed the individual defendants that it was probable that the plaintiff would not be able to exercise his option to purchase said interests of said last named defendants in said corporations under said contract of January 16, Exhibit "B," and in this behalf these defendants aver that on or about the month of March, 1919, plaintiff informed said individual [981] defendants that he would not exercise his option to purchase said interests of said individual defendants in said corporations under said contract of January 16, 1919, Exhibit "B"; deny that thereupon in or about the month of March, 1919, or at any other time, or at all, the defendants, Poole, Murrish, Nenzel, and Friedman, or any of them acting for themselves, or for the defendants, Lena J. Friedman, Jones, Huntington, Goodin, Twigg, or Hinch, or any of them, with the intent to deceive plaintiff, or at all, or for the purpose of inducing plaintiff to execute or undertake the supplemental contract, Exhibit "C," falsely or fraudulently by means of telegrams or letters, or by any other means whatsoever, or at all, informed the plaintiff that further or new development work had been carried on within said mines, mining claims or mining rights of Nevada Humboldt Tungsten Mines Company which had developed, placed in sight, blocked out and made ready for mining, large or any quan-



tities of scheelite ore of commercial value, or any other value capable of being concentrated and the concentrates so returned were of great or any value; deny that thereafter, or on or about the 2d day of April, 1919, or at all, the defendants, Poole, Murrish or Nenzel, came to Denver, Colorado, for the purpose of inducing the plaintiff to make a supplemental contract for the disposition of their respective interests, or a part thereof, or for the purpose of inducing said plaintiff to make any contract relative to said property; deny that said plaintiff believed or relied upon the alleged or any representations of the defendants Poole, Murrish and Nenzel, or any of them, representing themselves or their [982] co-defendants, or any of them, in entering into the said supplemental contract with said defendants, and in this behalf, these defendants allege that at the special instance and request of said plaintiff and in consideration of his representations and statements to said individual defendants, that owing to the tungsten market being demoralized it seemed impossible for said plaintiff to carry out his part of said contracts, Exhibits "A" and "B," and for that reason it was improbable that he, the said plaintiff, would be able to exercise his option contained in said contract Exhibit "B," and that in consideration of said representations and in the belief and reliance upon the truth of the same, and at the instance and request of plaintiff, said individual defendants and said plaintiff entered into said supplemental contract of April 2, 1919, Exhibit "C"; that said

plaintiff, his agents, mining engineers and representatives, at all times, commencing at a time shortly prior to January 16, 1919, and up to on or about June 16, 1919, had access to all and singular the mines, mining claims and mining rights of the said Nevada Humboldt Tungsten Mines Company; that at the time said supplemental contract was entered into by said plaintiff on or about April 2, 1919, the said plaintiff had actual knowledge of all and singular what development work had been carried on and performed within the mines and mining claims and property of the said Nevada Humboldt Tungsten Mines Company; that at said time said plaintiff had actual knowledge of the quantity and concentrating value of what scheelite ores had been developed, placed in sight and blocked out, and the commercial value thereof; and [983] that said plaintiff continued to and did have actual knowledge, during the month of May, 1919, of all and singular the amount and character of said development work that had been carried on within said mines and mining claims and property of said company, and the amount of scheelite ore which had been developed, placed in sight and blocked out, and the commercial value thereof.

Further answering the allegations contained in said paragraph V these defendants deny that the defendants Poole, Murrish and Nenzel, or any of them, acting for themselves, or as the agents of and for the other defendants, or otherwise or at all, for the purpose of inducing the plaintiff to enter into said supplemental contract of April,

2, 1919, or for any other purpose or at all, then and there or at any time, falsely or fraudulently or with intent to deceive said plaintiff, or for any purpose whatsoever, represented to plaintiff that since the examination of the mines, mining claims and mining rights of said Nevada Humboldt Tungsten Mines Company, and the report thereof made by the said Howland Bancroft, mining engineer aforesaid, to said plaintiff, great or additional ore bodies of equal or any grade or quality had been developed, or that a large or any amount of new development work had been done or performed on said mines or that there was then on said April 2, 1919, or at any time thereabouts, or at all, blocked out, in sight or ready for mining or reduction into concentrates over sixty thousand tons, or any other amount, of scheelite ore which would carry an average of 1.75% tungstic acid, or that would carry any other value or quantity whatsoever, and in this behalf these defendants allege [984] that said plaintiff, his agents, mining engineer and representatives for the period of from shortly preceding the contract of January 16, 1919, up to and including on or about June 16, 1919, at all times had access to the mines, mining claims, and mining property of said Nevada Humboldt Tungsten Mines Company, and during said period and prior to the execution of the contract of April 2, 1919, Exhibit "C," plaintiff's mining engineer and representative, at the instance of plaintiff and on his behalf, visited said property and examined and inspected the same, and reported the result of such work to

plaintiff prior to the execution of said supplemental contract of April 2, 1919, Exhibit "C," and that at all times during said period between January 16, 1919 and April 2, 1919, and said plaintiff had full, complete and ample opportunity to see, appraise and understand all and singular, the conditions, amount of ore, quality and values thereof, and all material matters pertaining to the subject matter of said contract; these defendants deny that any representations made by said defendants or any of them to the plaintiff were false or untrue, and deny that any representation was at any time made by said defendants, or any of them, for the purpose of deceiving said plaintiff, or for the purpose of causing him to undertake or carry out the provisions of said supplemental contract of April 2, 1919, Exhibit "C," or at all, save as to the truth and fact of said subject matter; deny that in truth or in fact at said time, to wit: April 2, 1919, there was opened up and developed and in sight in said mine, not to exceed nineteen thousand tons of scheelite ore of an average value not to exceed 1.75% tungstic acid, and in this behalf these defendants [985] allege that at said time there was opened up and developed, and in sight in said mine quantities of scheelite ore greatly in excess of nineteen thousand tons of an average of 1.75% tungstic acid.

That said plaintiff is, and at all times herein mentioned was, and for many years prior has been, an ore dealer on a large and extensive scale, engaged in buying and selling and handling ores of the same

kind and character found in said mining property; and that plaintiff was fully, peculiarly and thoroughly experienced in said work and business, and able by inspection and examination to ascertain and determine the amount of ore in sight in said mining property, and the quality, character and approximate value thereof.

#### VI.

Respecting the allegations of paragraph VI of plaintiff's complaint these defendants deny that plaintiff relied upon or believed the alleged or any false or fraudulent representations of the defendants, so alleged to have been made on or about April 2, 1919, or at all; that respecting the remaining allegations in said paragraph VI defendants have not sufficient knowlege or information upon which to base a belief and therefore deny the same.

#### VII.

Respecting the allegations of paragraph VII of plaintiff's complaint, these defendants deny that plaintiff, relying upon said alleged or any representations, gave any time or efforts to said enterprise or the consummation of said contract during all or any of the time from April 2, 1919, to June 1, 1919, or at all; that as to the remaining allegations of said paragraph VI, these defendants have not sufficient knowledge or information upon which to base a belief, and therefore deny that as a result of the alleged, or any expenditures, time or efforts of the plaintiff, plaintiff succeeded, or had



pledged by himself or other persons associated with him, an amount sufficient to meet all or any obligations of his under the terms of said contract, or sufficient to entitle him to receive the 62%, or any other per cent or amount, of the capital stock of the [986] corporations mentioned in said paragraphed VII. In this behalf these defendants aver that all and singular the allegations, matters and things set forth in said paragraph VII, commencing with the word "that" in line 23, page 8, of said complaint, to and including the last word in said paragraph in line 2, page 9 of said complaint are sham, frivolous, immaterial, irrelevant and redundant, and these defendants ask that the said matter be disregarded in that it is a mere conclusion, self-serving statement, not a statement of any fact or facts, and is inconsistent with and contradictory of the conditions of said contract Exhibit "C," which by its terms requires a deposit of money to be made by plaintiff on or before June 16, 1919 in the Wells-Fargo Nevada National Bank in an amount sufficient to liquidate the indebtedness of said corporation defendants, and that the amount necessary to liquidate said indebtedness, at all times since April 2, 1919, to June 16, 1919, both inclusive, was not less than \$141,000.00, all of which was at all times well known to and understood by said plaintiff.

#### VIII.

Respecting the allegations of paragraph VIII of said complaint these defendants aver that all and singular the allegations, matters and things set

forth in said paragraph VIII are sham, frivolous, immaterial, irrelevant and redundant, and these defendants ask that the said matter be disregarded, in that it is inconsistent and contradictory with the terms of said Exhibit "C," for the reasons hereinbefore stated in paragraph VIII hereof, and for the further reason that commencing with the word "and" in line 9 of said paragraph VIII, page 9 of said complaint and [987] including the remainder of said paragraph, the same is not a plea of any probative fact, or facts, but is an attempt to plead evidence, which evidence is incompetent and immaterial for each and all of the reasons stated in paragraph VII hereof. Subject to the foregoing, defendants aver they have not sufficient knowledge or information respecting the allegations of said paragraph VIII of said complaint upon which to base a belief, and therefore deny the same, save that these defendants admit that on or about between the 18th and 25th days of May, 1919, plaintiff informed the defendants as named in said paragraph of the complaint, that he, the said plaintiff, was ready, willing and able to perform his obligations under said contract, Exhibit "C" but in this behalf these defendants aver that plaintiff was not then, or at any time, in truth and in fact either ready, able or willing to perform his said obligations under said contract, all of which was at all times well known to and understood by said plaintiff.

IX.

Respecting the allegations of paragraph IX of

said complaint, these defendants deny that on or about June 1, 1919, or at any time, plaintiff discovered the alleged or any falsity of the alleged or any representations of the defendants, or any of them; that as to all and singular the allegations, matters and things set forth in said paragraph IX commencing with the word "and" in line 22, page 9, of said complaint, including the remainder of said paragraph, these defendants aver the same is sham, frivolous, irrelevant, redundant and immaterial, and ask [988] that said matter may be disregarded in that it is inconsistent and contradictory with the terms of said Exhibit "C" for the reasons set forth in paragraphs VII and VIII thereof. Subject to the foregoing and as to the allegations of said paragraph IX commencing with the word "and" in line 22 of page 9 of said complaint, to and including the word Exhibit "C" in line 25 of said page, these defendants aver they have not sufficient knowledge or information sufficient to form a belief; that if plaintiff ever had any associates and if it is true as alleged in his complaint, said associates withdrew from said undertaking and refused to go into the same and refused to advance any money whatsoever for it; these defendants allege, according to their information and belief that said associates withdrew and refused for the sole and only reason that plaintiff refused to allow such associates sufficient of said stock to give them control as desired by them.

## X.

Respecting the allegations of paragraph X of said complaint these defendants deny that at any time before the expiration of said contract of April 2, 1919, Exhibit "C," or on or about the 20th day of May, 1919, or at any date or time whatsoever, the plaintiff requested or demanded the said defendants, or any of them, that they so organize a new corporation or amend the articles of incorporation of the Nevada Humboldt Tungsten Mines Company to comply with the provisions of the contract of April 2, 1919, Exhibit "C"; deny that said defendants, or any of them, neglected or refused to comply with any demand or request of plaintiff relative to said subject matter; admit that these defendants at all times since June 16, 1919, the date when said contract expired by limitation, have continued and will continue to refuse to perform any of the terms or conditions of the said contract, Exhibit "C"; deny that such refusal constitutes any neglect on the part of these defendants, and in this behalf these defendants aver that since said June 16, 1919 defendants have not been and are not now under any obligations whatsoever to perform any of the terms of said contract; deny that plaintiff has performed each or every covenant or obligation or agreement in said contract to be by him kept or performed, [989] and in this behalf these defendants aver that said plaintiff neglected and refused to perform any of the terms and conditions of said contract to be by him kept

and performed, all as hereinafter more particularly set forth.

## XI.

Respecting the allegations of paragraph XI of plaintiff's complaint, these defendants aver that the bill referred to in said paragraph of plaintiff's complaint as reported out of committee recommends that a duty of nine dollars per unit be placed on tungsten ores for a period of three years and no longer; that as to each of the remainder of the allegations of said paragraph XI, these defendants have not sufficient knowledge or information upon which to base a belief, and therefore deny the same.

## XII.

Respecting the allegations of paragraph XII of said complaint, these defendants deny that on or about August 16, 1918 (sic) 1919, or at any time, or at all, the defendant Nevada Humboldt Tungsten Mines Company, or Tungsten Products Company entered into any contract with the defendant W. J. Loring for the sale of all of the assets of said corporation defendants. In this behalf these defendants aver that the franchises and business, books, corporate seals and records of said corporation defendants were excluded from said contract of August 16, 1919, and from the conveyances, bills of sale and assignments made pursuant thereto; deny that said meetings of stockholders were held without adequate or proper notice thereof to the stockholders [990] of said corporations, or either of them, or to the plaintiff, a



stockholder of the defendant Nevada Humboldt Tungsten Mines Company; deny that said meetings were held without the giving of notice as required by the laws of Nevada, or particularly, or otherwise, by Statutes of Nevada, 1913, page 65, and in this behalf these defendants aver that all and singular said business was regularly had, done and transacted at said meetings, which meetings were duly called, held and conducted in full compliance with law and the by-laws of said defendants Nevada Humboldt Tungsten Mines Company and Tungsten Products Company, all as hereinafter more particularly set forth, and also that the total authorized issued and outstanding capital stock of the defendant Tungsten Products Company was present at said stockholders' meeting and voted thereat in favor of said contract; admit that plaintiff objected to said sale and contract, but aver that he did so as a stockholder of said Nevada Humboldt Tungsten Mines Company only and that said plaintiff never was and is not now a stockholder of the defendant Tungsten Products Company; deny that the contract or conveyances authorized and entered into by said corporation defendants with the said W. J. Loring were merely pretended contracts or conveyances and in this behalf aver that the actual transaction was in all respects duly had and made as is hereafter more particularly set forth; deny that thereupon, or at all, plaintiff commenced an action in this Court as a stockholder to set aside, cancel and rescind said contracts and conveyances made by said corpora-

tions to the defendant W. J. Loring, but in this behalf these [991] defendants aver that there-upon and on August 16, 1919 plaintiff as a stockholder of the defendant Nevada Humboldt Tungsten Mines Company only, commenced an action to set aside, cancel and rescind said contract and conveyances made by said Nevada Humboldt Tungsten Mines Company; deny that said contracts or conveyances were unlawfully made by said defendant corporations, or either of them; deny that said defendant W. J. Loring took said deeds or said contract for said property from said defendant corporations, or either of them, with full or any notice of any right or equities of said plaintiff, or that said W. J. Loring was duly or regularly informed thereof by plaintiff, or by any person whomsoever, before the said defendant W. J. Loring had in anywise performed any part or portion of said contracts and in this behalf these defendants aver that from and after June 16, 1919 plaintiff had no right or equities whatsoever in the premises, under contracts B and C, and since July 16, 1919 under said contract Exhibit "A."

### XIII.

Respecting the allegations of paragraph XIII of said complaint, these defendants deny that the alleged or any suit for the cancellation or rescission of said contract or conveyances to said W. J. Loring by said defendant corporations is now pending in this Court, but in this behalf these defendants aver that there is a suit by plaintiff as a stockholder of said defendant Nevada Humboldt Tung-

sten Mines Company only, for the cancellation and rescission of said contract and conveyances now pending in this Court, but that the defendants Tungsten Products Company and Mill City Development Company are not parties thereto; [992] deny that any meeting of stockholders has been called to further or in any manner authorize or ratify the sale of said property to the defendant W. J. Loring, or to authorize instruments of conveyance to said Loring by the defendants Tungsten Products Company or Mill City Development Company; deny that any meeting of stockholders of any of said corporation defendants has at any time been called to further or otherwise authorize or ratify the sale of said W. J. Loring of all property or assets of said corporation defendants or any of them, or to further or otherwise ratify said sale of any assets or property whatsoever of the defendants Tungsten Products Company or said Mill City Development Company; deny that the individual defendants will vote any stock whatsoever of said Tungsten Products Company, or of said Mill City Development Company at the alleged or any stockholders' meeting of said corporations; admit that at the meeting of stockholders of said Nevada Humboldt Tungsten Mines Company called for April 19, 1920, and postponed as hereinafter stated, said individual defendants if permitted by order of this Court will vote all their shares in said last-named corporation in favor of further authorizing and ratifying said sale to the said W. J. Loring, and that such shares include

the said 62% of the capital stock of said corporation claimed by plaintiff; deny that any of the stock in any of said corporations is rightfully or at all the property of plaintiff, save that plaintiff is the owner of record of 5000 shares and no more of the capital stock of said defendant Nevada Humboldt Tungsten Mines Company; deny that said individual defendants will vote their alleged or any shares of stock in favor of authorizing a [993] sale to said W. J. Loring of all the property of said corporations or any of them, and these defendants aver that said stock will be voted only to further ratify and confirm the sale by said defendant Nevada Humboldt Tungsten Mines Company of the particular property mentioned in said contract and no other; deny that by the doing of all or any of the acts alleged, great or irreparable, or any, damage or injury whatsoever will be done to plaintiff; deny that said individual defendants will vote said stock as alleged unless restrained by the order of this Honorable Court, but in this behalf said individual defendants aver that unless restrained said individual defendants will vote their said stock of said Nevada Humboldt Tungsten Mines Company for the further ratifying and assurance by said corporation to said W. J. Loring of the property described in said contract; deny that the effect of said sale as above stated will be to practically dissolve said corporations, or any of them, and in this behalf these defendants aver that said corporations have continued to maintain their corporate existence, books and records, and

that said Nevada Humboldt Tungsten Mines Company has not determined as to its future policy or whether or not it will employ all or some of the moneys to be received from said W. J. Loring in acquiring and operating other mining properties; deny that the alleged or any distribution to stockholders will be to the great or irreparable or any damage to plaintiff, or that it will greatly or otherwise depreciate the value of any stock to which said plaintiff is entitled under the terms of said contract, Exhibit "C"; deny that plaintiff is entitled to any stock under the terms of said [994] contract; deny that the sale, or sales, mentioned in said paragraph XIII is a pretended sale and these defendants aver that the same is in all respects duly and regularly made, had and done; deny that the said sale or sales is in violation of the laws of Nevada, or of the rights of plaintiff as a stockholder in said corporations, or any of them; deny that plaintiff is a stockholder in either the said Tungsten Products Company, or Mill City Development Company, or that he is a stockholder in said Nevada Humboldt Tungsten Mines Company, except as to 5000 shares and no more; deny that the defendant Loring will accept said alleged ratification except as to said defendant Nevada Humboldt Tungsten Mines Company, or that the alleged, or any deeds of conveyances or the alleged or any instruments of conveyance will cast a cloud upon the title of said defendant corporations, or any of them, of, in or to said mining property, or that the same will greatly, or otherwise. depreciate the



value of any shares of stock which plaintiff now owns or which plaintiff is entitled to receive under the terms of said contract, Exhibit "C"; deny that defendant Loring will enter in or upon said mining property or any part thereof, under or by virtue of any instruments or conveyances as will be authorized or executed at or by authority of said meeting called for April 19, 1920, or will extract any minerals therefrom, but in this behalf these defendants aver that on August 23, 1919, said defendant W. J. Loring entered upon and took possession of the property described in said contract, and ever since has had and does now hold possession thereof, under and by virtue of a deed of conveyance duly made, executed [995] and delivered on said August 23, 1919 to said defendant W. J. Loring by the said Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company; deny that said defendant Nevada Humboldt Tungsten Mines Company will at said, or, any, stockholders' meeting, permit the said individual defendants to vote any of plaintiff's shares of stock whatsoever, and deny that any shares of stock which are justly the property of the plaintiff will be voted by any of said defendants; deny that said 62% of the shares of any of said corporations are justly the property of plaintiff, or that plaintiff will suffer great or irreparable, or any, injury whatsoever in the premises.

#### XIV.

Respecting the allegations of paragraph XIV of said complaint, these defendants aver that the same,

and the whole thereof is sham, frivolous, irrelevant, redundant and immaterial and these defendants ask that said matter be disregarded in that plaintiff's alleged offer to perform is not performance; that plaintiff has no legal or equitable right attach as a condition precedent to performance by him, that the contract, Exhibit "C" be modified by defendants in the particulars alleged or in any particulars whatsoever; that said matter constitutes a vital and radical departure from the contract in respect to matters of substance. Subject to the foregoing, these defendants deny that on or about June 1, 1919, or at all, plaintiff duly, or otherwise, offered to perform each and every, or any covenant or obligation on his part to be performed under said contracts Exhibits "A," "B" and "C," or any of them, provided these defendants would agree to allow to plaintiff an abatement of certain terms thereof, as alleged or [996] otherwise, or at all. In this behalf these defendants aver that no abatement of terms were ever asked for by plaintiff as to the defendants Nevada Humboldt Tungsten Mines Company, or said Tungsten Products Company, and that defendant Mill City Development Company was not a party to any of said contracts; deny that these defendants, or any of them, made any false or fraudulent representations to said plaintiff, as alleged, or at all; deny that on or about June 1, 1919, plaintiff offered to advance, under the terms of said contracts, or any of them, the sum of \$85,000, or any sum, or amount whatsoever to be used for the purposes alleged, or for any pur-

pose; deny that in conformity with the provisions of said contract Exhibit "C" Plaintiff then, or at all, offered to advance additional money from time to time as alleged for the purpose of liquidating any balance due creditors from said defendant corporations, or for any purpose whatsoever.

XV.

Respecting the allegations of paragraph XV of said complaint these defendants deny that between January 16, 1919, and May 5, 1919, or between any other dates, or at all, plaintiff loaned or advanced to the defendant corporations the sum of \$78,000.00, or any sum or amount whatsoever. In this behalf these defendants allege that on divers dates between January 16, 1919, and April 30, 1919, pursuant to and in conformity with his obligations under said contract of January 16, 1919, Exhibit "A" the plaintiff loaned and advanced to the defendants Nevada Humboldt Tungsten Mines Company and Tungsten Products Company [997] the said sum of \$78,000.00; that the repayment of all and singular said loans and advances were fully secured by shipments of scheelite concentrates by said last-named defendant corporations to plaintiff, pursuant to said contract, and at the time of making and entering into said contract Exhibits "A" plaintiff expected to realize and receive a net profit of over \$18,000.00 as part of the consideration for his agreement to make said loans and advances, and that thereafter plaintiff received repayment in full of said \$78,000.00 from said last-named corporation defendants and these defendants aver, according to

their information and belief, that plaintiff also received and retained large and substantial secret profits from the proceeds of said business, the details or amount of which secret profits are unknown to these defendants.

### XVI.

Respecting the allegations of paragraph XVI of said complaint, these defendants deny that plaintiff has no plain, speedy or adequate remedy at law; deny the said contracts or conveyances heretofore executed and delivered to said W. J. Loring, and which it is the purpose of said Nevada Humboldt Tungsten Mines Company stockholders to ratify and confirm, will constitute a cloud upon the property or the title thereto of said Nevada Humboldt Tungsten Mines Company; deny that it will be necessary to commence various and sundry, or any, proceedings for the removal of the alleged or any cloud. [998]

## FURTHER ANSWER AND DEFENSE.

### I.

Further answering said bill of complaint, and the matters and things set forth and complained of, these defendants allege that at all times since on or about February 17, 1917, and June, 1918, and July 1918, the defendants Nevada Humboldt Tungsten Mines Company, Tungsten Products Company and Mill City Development Company, respectively have been and now are corporations duly incorporated, organized and existing under and by virtue of the laws of the State of Nevada, with their principal offices and places of business at Lovelock, Pershing

(formerly Humboldt) County, Nevada; that said Nevada Humboldt Tungsten Mines Company was incorporated for the purpose of buying and selling mining property, working the same, and generally transacting, conducting and carrying on the business of dealing in mines and mining property; that said Tungsten Products Company was incorporated for the purpose, primarily, of operating mills for the reduction of ores, and generally to deal in mining property; and that said Mill City Development Company was incorporated for the purpose, primarily, of owning and operating water works and pipe-lines for carrying water in connection with mining operations; that thereupon said defendants entered upon said work and business; that said Nevada Humboldt Tungsten Mines Company subsequently acquired, among other things, the mining claims described in the first two paragraphs of the description of property in the contract with the said W. J. Loring, being marked Exhibit 1 hereto attached, and made a part hereof; that said Tungsten Products Company acquired, among other things [999] the property described in the third and fourth paragraphs of Exhibit 1; and said Mill City Development Company acquired certain water rights, and a pipe-line, and which was used in connection with the above-described property; that mining operations were thereupon commenced and carried on, and in consequence the said defendants, Nevada Humboldt Tungsten Mines Company, and Tungsten Products Company and Mill City Development Company became indebted to various per-



sons in a sum approximately from \$100,000.00 to \$120,000.00 on or about January 16, 1919; that in order to obtain money to discharge said indebtedness the defendants Nevada Humboldt Tungsten Mines Company and Tungsten Products Company entered into the agreement, Exhibit "A," and said individual defendants entered into the agreement Exhibit "B," both attached to plaintiff's complaint; that mining operations were thenceforth continued, and the net result of such continued operations was to increase said indebtedness to a sum of about \$220,000.00 on or about March 30, 1919, nearly all of which said indebtedness had been personally and legally guaranteed by the individual defendants herein named and for the payment of which they were jointly and severally personally liable, whereupon and for the purpose of enabling the said defendants, and particularly the defendant Nevada Humboldt Tungsten Mines Company, which owned all the stock (less nominal shares held by the directors) of the Tungsten Products Company, and also owned fifty per cent of the stock of the Mill City Development Company, to extricate itself and pay its said indebtedness, and the tungsten market having become demoralized, making it apparently impossible [1000] for plaintiff to carry out and perform his obligations under contracts Exhibit "A" and "B," the said plaintiff notified and informed these defendants of that fact, and that for that reason it was improbable that he would exercise his said option under the terms of said contract Exhibit "B," and said plaintiff, having had access

to said property and having then and there full knowledge of all and singular the amount of development in said property and of the quantity and quality of ores blocked out therein, thereupon and at the instance and request of plaintiff the said individual defendants entered into the contract Exhibit "C" attached to plaintiff's complaint; that upon the execution and delivery of said contract of April 2, 1919, Exhibit "C," to wit: on or about April 26, 1919, the said plaintiff personally visited, inspected and examined said property and the amount of development work thereon, and the quantity and quality of ores therein, and the ores blocked out, and ores mined, and that thereupon, and not before, plaintiff devoted some time to said business and made expenditures for the purposes of said work and business, the amount or value of which these defendants are unable to state.

## II.

That on or about June 1, 1919, said plaintiff informed the defendants that he could not carry out or perform the terms of said contracts Exhibits "A," "B" and "C" and demanded that defendants agree to execute a new contract as a complete substitute for said contracts "A," "B" and "C," which proposed new contract contained terms substantially and radically differing from the said terms of said contracts Exhibit "A," "B" and "C" and which proposed new [at last line this page "of said contracts Exhibits A, B & C," interlined before filing and word "demanded" interlined in line 24] [1001] conditions and terms were all to the sub-

stantial advantage of and favoring the plaintiff, and burdensome to these defendants, and these defendants then and there, on or about said June 1, 1919, refused to agree to or execute said new proposed contract, or any new contract, and that thereupon the said defendants at once commenced negotiations with their said creditors with a view of conveying all of said property to a trustee for the benefit of said creditors, and pursuant to such negotiations and on June 17, 1919, all and singular said property was, by a declaration of Trust, assigned to J. T. Goodin, as trustee for said creditors, and said creditors thereby granted a six months' extension of time for the payment of their several claims, and thereupon the said J. T. Goodin as Trustee entered into and took charge of all and singular said property, work and business and so continued until on or about August 16, 1919. [1002]

That said work and business necessarily required the expenditure of a large sum of money, and in consequence of said mining operations theretofore carried on said corporation defendants became indebted to various and divers persons in a sum of money over \$200,000.00; that at said time, to wit, on or about August 16, 1919, the value of the product of the mining operations of said corporation defendants, to wit, tungsten, had become greatly depressed and depreciated in the market, and said defendants were unable to pay said indebtedness or any considerable portion thereof, and had no property upon which money could be raised for the payment and liquidation of said indebtedness, save and

except the property so, as aforesaid, mentioned and described as belonging to the defendants, Nevada Humboldt Tungsten Mines Company and Tungsten Products Company, which property constituted the chief and most valuable asset and portion of the entire property. That, in consequence of said defendants' inability to pay or otherwise adjust said indebtedness, they were threatened with attachment suits and litigation of various kinds which, if instituted, would have impaired and wasted the assets of defendants, destroyed their credit, and ultimately forced them into involuntary bankruptcy. That commencing about June 6, 1919, to on or about August 16, 1919, as defendants are informed and believe and so allege, the plaintiff, taking advantage of the extreme financial stress and difficulties of defendants and for the sole purpose of harassing defendants with suits and litigation and thereby making it impossible for defendants to continue said mining operations, and to coerce and compel defendants to either accede to the plaintiff's said [1003] demands for a modification of the contracts, Exhibits "B" and "C," or be forced into bankruptcy, said plaintiff did attempt to dissuade certain creditors from agreeing to said extension agreement, and also did purchase and attempt to purchase and obtain assignments to himself of outstanding claims against said defendants amounting to about \$20,000.00 and that to avoid the said consequences of plaintiff's holding such claims defendants were compelled to and did pay said claims with money borrowed by them from said codefendant

W. J. Loring, for that purpose. That on August 16, 1919, said defendants were owing a large sum of money for labor performed upon and in said mining operations and business and were, as aforesaid, without funds wherewith to discharge the same, and to that end said defendant, Nevada Humboldt Tungsten Mines Company had borrowed ten thousand (\$10,000.00) Dollars from its said codefendant, W. J. Loring, with which to pay, and which was used to pay, said labor claims.

That shortly prior to August 16, 1919, said defendants entered upon negotiations with the codefendant, W. J. Loring, with a view of selling to the said W. J. Loring, the above-described mining ground and certain personal property so belonging to the defendants, Nevada Humboldt Tungsten Mines Company and Tungsten Products Company, to enable these defendants to extricate themselves from the financial difficulties aforesaid and to pay their indebtedness, pursuant to which said negotiations, the said codefendant, W. J. Loring, offered to purchase the above-described property of the defendants, Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company, for the sum of \$333,333.33 as the full purchase price thereof. [1004]

That thereupon on August 16, 1919, a meeting of the Board of Directors of said Nevada Humboldt Tungsten Mines Company was duly called and held in the manner and form as required by law and the By-laws of said defendant, and that at said meeting, at which all members of said Board were pres-



ent and acting, the said Board of Directors duly, regularly and unanimously passed a resolution accepting the offer of the said W. J. Loring, as aforesaid, and authorized, directed and empowered the President and Secretary of said defendant to execute, on its behalf, an agreement or contract of sale with the said W. J. Loring, for the sale of the mining ground, premises and property herein particularly described as being the property of said defendant, and in said contract so authorized the said Tungsten Products Company, as to its property, was joined with said defendant, Nevada Humboldt Tungsten Mines Company, as a party of the first part.

That the sale so authorized and consummated was not intended to, and did not, include all of the property and assets of said corporation defendants. That excluded from said sale so agreed upon, is the following described property and assets, which at all times, since long prior to August 16, 1919, on August 16, 1919, and on August 23, 1919, belonged to and was held and owned by said defendant, Nevada Humboldt Tungsten Mines Company, to wit;

The franchise and business of said defendant, its books, corporate seal and records, and mining machinery and supplies of the value of \$1106.25 or thereabouts then on hand. The franchise and business of said Tungsten Products Company, its books, corporate seal and records, property belonging to said Tungsten Products [1005] Company, were also excluded from said sale.

That by the terms of said agreement the said co-

defendant, W. J. Loring, promised and agreed to pay or cause to be paid, to said Nevada Humboldt Tungsten Mines Company and the said Tungsten Products Company as the purchase price for the property so, as aforesaid agreed to be sold and purchased the said sum of \$333,333.33 in the manner following:

\$50,000.00 on or before September 1, 1919, the further sum of \$50,000.00 on or before October 1, 1919, the further sum of \$50,000.00 on or before November 15, 1919, the further sum of \$50,000.00 on or before December 27, 1919, the further sum of \$33,333.33 on or before February 4, 1920, the further sum of \$25,000.00 on or before May 4, 1920, the further sum of \$25,000.00 on or before August 4, 1920, the further sum of \$25,000.00 on or before November 4, 1920, and the further sum of \$25,000.00 on or before February 4, 1921, all of said payments to be made to the credit of said Nevada Humboldt Tungsten Mines Company and the said Tungsten Products Company at the First National Bank of Lovelock, Nevada, by payment thereof to its cashier, J. T. Goodin, who was also the trustee for the creditors of said corporation defendants, with instructions from said companies to said Goodin to first pay off the said loan of Ten Thousand (\$10,000.00) Dollars so, as aforesaid, procured to pay the labor claims, and thereafter pay out said installments so received by him to the respective creditors in accordance with the instructions contained in a written declaration of trust delivered to and filed with said cashier and trustee, leaving

the remainder of said moneys so paid to the credit of said corporation [1006] defendants available for corporate purposes and business of said companies.

That thereupon the said Board of Directors duly and unanimously passed a further resolution at said meeting, authorizing, empowering and directing the President and Secretary of said Nevada Humboldt Tungsten Mines Company to make, execute and deliver on behalf of said defendant, and in accordance with the terms of said contract so agreed on, all necessary deeds, bills of sale and conveyances for the transfer of said property to the said W. J. Loring.

That at the time of the organization of said Nevada Humboldt Tungsten Mines Company, by-laws were duly adopted by it in the manner as prescribed by law and said by-laws at all times herein mentioned, have been in full force and effect; that said by-laws duly vest in the Board of Directors of said defendant, the power, among other things, to sell, assign or otherwise convey for and in the name of said defendant, any of its real estate or other property, rights and privileges whatsoever, on such terms and conditions as said Board of Directors may think fit.

That thereupon at said meeting of the Board of Directors of said Nevada Humboldt Tungsten Mines Company, and by way of further assurance only, of the sale and transfer of said property, a meeting of the stockholders of said defendant was called to meet at the office of the company, on

August 23, 1919, for the purpose of approving and further ratifying the sale of said Company's property described in said contract to the said W. J. Loring.

That the by-laws of said defendant then and now in [1007] full, force and effect provide for a five days' written notice to be given of the time, place and purpose of special meetings of stockholders, and that a notice was mailed to each stockholder of record, said notice being dated August 16, 1919, and notifying stockholders of the day and hour of said meeting to wit, August 23, 1919, at 2 o'clock P. M. and fully stating the special purpose and business proposed to be transacted at said meeting, and that a copy of said notice enclosed in an envelope securely sealed and directed to each and every stockholder of record of said defendant, postage fully prepaid, was deposited in the United States post-office at Lovelock, Nevada, pursuant to said by-laws and giving notice in accordance therewith, that a copy of said notice was so mailed to said plaintiff, and the same was actually received by him prior to August 23, 1919, the date of said meeting; that pursuant to said notice the meeting of the stockholders of said defendant corporation was duly held on August 23, 1919, at which meeting there was 941,800 shares of stock of said defendant corporation present in person or by proxy. That on said August 23, 1919, and on August 16, 1919, the total issued and outstanding stock of said defendant entitled to vote at such stockholders' meetings was 1,000,000 shares. That plaintiff was the owner and

holder of 5000 shares, and no more, thereof. That said stockholders' meeting was regularly and duly convened, and thereupon a resolution was unanimously adopted ratifying and approving the act of said Board of Directors on August 16, 1919, in authorizing and directing the President and Secretary to execute, on behalf of said defendant corporation, the aforesaid contract and agreement made between said defendant and the Tungsten Products Company on the one part and the said W. J. Loring on the other part, and ratified and approved the act of said Board of Directors in [1008] that behalf, and adopted the same as the act of the stockholders of said Nevada Humboldt Tungsten Mines Company.

That at said stockholders' meeting a further resolution was duly and unanimously passed, directing, authorizing and empowering the President and Secretary of said defendant to make, execute and deliver to the said W. J. Loring, good and sufficient deeds and bills of sale of the property of said company, described in and under the terms of, and as provided in said contract, and also that the Board of Directors of said defendant were ordered and directed by said resolution to cause said contract with said W. J. Loring to be fully carried out and performed on the part of said defendant, 941,800 shares being voted in favor of said resolution and no shares being voted against the same. That the said J. T. Goodin who had previously been duly selected and appointed a trustee for creditors of said corporation defendants, as herein set forth,



there and then in writing duly approved said contract on behalf of the creditors of said corporation defendants and consented to the same. That all and singular the allegations herein with respect to the action of the Board of Directors' by-laws, notices and calls for meetings, apply to the defendant Tungsten Products Company, except that at the stockholders' meeting of said company held on August 16, 1919, there were present stockholders owning and holding 99,680 shares of the stock, being the entire issued and outstanding capital stock of said company, and that the stockholders so owning and holding said entire capitalization of said Tungsten Products Company, and the stockholders owning 991,800 shares of the [1009] 1,000,000 shares of issued stock of said Nevada Humboldt Tungsten Mines Company on August 16, 1919, duly signed and executed a written ratification of said contract, Exhibit 1, full true and correct copies of which ratifications are hereunto annexed, marked Exhibits 2 and 3 respectively.

That thereupon and immediately upon adjournment of said stockholders' meeting on said August 23, 1919, a special meeting of the Board of Directors of said Nevada Humboldt Tungsten Mines Company was duly held at its said office, at which meeting all members of said Board of Directors, were present and acting, and that at said Directors' meeting a resolution was duly adopted, authorizing, empowering and directing the President and Secretary of said defendant to make, execute and deliver to said W. J. Loring good and sufficient

deeds of conveyance, bills of sale, and assignments conveying to said W. J. Loring the said described property of said defendant according to the terms of that certain agreement so, as aforesaid, made on August 16, 1919, by and between said corporation defendants on the one part and said W. J. Loring on the other part, and also to accept from said W. J. Loring a mortgage to said companies of the real estate included in said conveyance to secure the unpaid purchase price thereof.

That thereupon and pursuant to the authorization hereinbefore set forth, on August 23, 1919, said Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company through their respective Presidents and Secretaries, under their respective corporate seals, duly executed and delivered to said W. J. Loring, conveyances, bills of sale and [1010] assignments of the properties belonging to them, respectively, set forth and described in said contract of August 16, 1919, and said corporation defendants received and accepted from said W. J. Loring, the mortgage covering the real property set forth in said agreement of August 16, 1919, to secure the purchase price of the properties covered by said agreement of purchase and sale in compliance with the provisions of said resolutions. That pursuant to and in compliance with the terms and conditions of said contract of sale and purchase, and of said mortgage the codefendant, W. J. Loring, paid to said corporation defendants, on August 29, 1919, on account the said purchase price, the sum of \$50,000.00; on October 1, 1919, the further sum of

\$50,000.00; on November 15, 1919, the further sum of \$50,000.00; on December 27, 1919, the further sum of \$50,000.00; on February 4, 1920, the further sum of \$33,333.33 and on May 4, 1920 the further sum of \$25,000.00. And these defendants verily believe and so allege that said codefendant, W. J. Loring will continue to pay and deliver to said corporation defendants all other and additional moneys which may become due by the terms of said contract and mortgage, until the balance now unpaid, to wit, \$75,000.00 has been fully and finally paid.

### III.

Defendants further aver and show to the Court that plaintiff has been guilty of laches in asserting his alleged rights and in the filing of his complaint herein in support thereof, and in this behalf said defendants allege; that on June 17, 1919, for the better adjustment of the said indebtedness of said corporation defendants and for the protection [1011] of their numerous creditors, one J. T. Goodin was appointed by said creditors a trustee for the use and benefit of all the creditors of said corporation defendants, with the power, among other things to sue for, collect, and receive payment from defendants for and on account of the several claims of creditors so represented by said trustee.

That on August 23, 1919, and as a part of said transaction of sale to said codefendant, W. J. Loring, the said J. T. Goodin was duly appointed the agent and attorney in fact for said corporation defendants and authorized and directed to pay all the said creditors before paying any moneys accruing

from said sale to said corporation defendants; That pursuant to said authorization and direction, and as soon as said purchase price moneys were available, said J. T. Goodin did distribute and pay to said creditors according to their several claims, an aggregate of over \$200,000.00. That said creditors are numerous and scattered and it has been, and is, impossible to obtain return from said creditors of the money so paid to them. That said defendants have no property, assets or means sufficient or whereby they could raise said \$258,333.33, or any considerable portion thereof wherewith to make restitution to said codefendant, W. J. Loring of the moneys so, as aforesaid, paid by him and received to the use and benefit of said corporation defendants. That all and singular the foregoing facts were at all times well known to and understood by plaintiff, notwithstanding which, without sufficient or any reason, he neglected and delayed bringing his said suit until April 17, 1920, and thereby knowingly allowed sufficient time to elapse [word "over" interlined above line 16 before filing—T. J. E.] [1012] so that, under the terms of said contract with the said W. J. Loring, said corporation defendants had collected and received \$233,333.33 on account of said purchase price and distributed over \$207,000 thereof to and among the creditors of said respective corporations.

That plaintiff at all times knew that said corporation defendants intended to and would promptly collect when and as soon as the same became due, the payments on account of said purchase price under said contract with the defendant, W. J. Lor-

ing, and intended to and would thereupon immediately pay out and distribute the same to said creditors, as aforesaid.

That defendants notified said plaintiff that when said contracts, Exhibit "B" and "C," expired by limitation on June 16, 1919, and said contract Exhibit "A" expired by limitation on July 16, 1919, they would refuse to recognize plaintiff as having any further rights thereunder or to the subject matter thereof, and plaintiff had knowledge at all times since June 6, 1919, that these defendants would not in any manner recognize plaintiff as having any rights whatsoever under said contracts, Exhibits "B" and "C" and since July 16, 1919 under said contract Exhibit "A" and defendants here aver that plaintiff by failing and neglecting to promptly and legally assert his alleged rights, these defendants were led to believe and did believe and rely upon such conduct as consent and acquiescence by said plaintiff to defendants' refusal to further consider said contracts, Exhibits "A," "B" and "C," as of any binding force, and as consent and acquiescence by said plaintiff in said contract, and sale transaction with said defendant, W. J. Loring ["over \$207,000 thereof" interlined line 4 before filing—T. J. E.]. [1013] In this behalf defendants further aver that said plaintiff was a creditor of said defendant corporations and on August 16, 1919, commenced an action in this court to obtain judgment for the sum so claimed, said action being No. 2262 on the records of this court; that thereafter and on or about February 13, 1920, for the



purpose of buying their peace, these defendants compromised and settled said suit by the payment of \$7334.04, \$1000.00 of which had been paid on January 8th, 1920, and said \$6334.04 paid on February 13, 1920 was paid to and received by plaintiff with the full knowledge then and there that the same was a portion of moneys paid to these defendants by the defendant W. J. Loring under and pursuant to said contract Exhibit 1.

#### IV.

And these defendants further aver and show to the court that plaintiff should not have or maintain his said bill of complaint herein for as much as the same is wholly without equity in this, among other things, to wit; that said plaintiff has not in his said complaint, or in any manner or at all, before or since the commencement of his said suit ever alleged, claimed or asserted, that said contract of April 2, 1919, Exhibit C, as proposed by plaintiff in his complaint herein to be modified and reconstructed by abatement of certain of the terms thereof, is as to the consideration so proposed to accrue to said defendants, either the fair, just or reasonable value of said property embraced by such proposed agreement, or that the enforcement of the same as so modified would be just or equitable. [1014]

#### V.

For a further answer and defense to plaintiff's complaint these defendants aver and show to the Court that said plaintiff should not have or maintain this action for in that heretofore, to wit, on

August 16, 1919, said plaintiff commenced an action against the individual defendants herein named to recover the sum of \$114,579.44 as damages, said action being numbered on the records of this court as Docket 2263, that in and by his complaint in said action, No. 2263, said plaintiff alleges as facts constituting his cause of action, the same alleged false and fraudulent representations as are alleged in his complaint in the instant case and claimed damages resulting therefrom in said sum of \$114,579.44, all of which fully appears from plaintiff's complaint in said action No. 2263, a full, true and correct copy whereof is annexed hereto, marked Exhibit 4, and here referred to.

That said individual defendants were duly served with summons in said action No. 2263 and thereafter appeared therein and filed their answer to said complaint on the merits and that thereafter plaintiff filed his reply in said action, full, true and correct copies of which said answer and reply are hereto annexed marked respectively Exhibits 5 and 6, and here referred to. That said action No. 2263 ever since has remained and now remains pending in this court; that at the time of the commencement of said action plaintiff was fully advised of and knew and understood all and singular the facts and circumstances embraced in the instant action and with such knowledge deliberately selected said remedy, to wit, [1015] the action for damages being said action No. 2263 and then and thereby made an irrevocable election of remedies and is equitably barred from having or maintaining the instant ac-

tion, a proceeding and remedy wholly inconsistent with the remedy so as aforesaid elected by plaintiff by his said action No. 2263.

WHEREFORE these defendants say that plaintiff's bill of complaint is without equity and pray that he take nothing thereby and that the same be wholly denied, disallowed and dismissed and that said defendants recover from plaintiff their costs and disbursements herein, and that it have and receive such other and further relief as the equities of the case may warrant, and which to the Court may seem meet and proper.

COOKE, FRENCH & STODDARD,  
Attorneys for Defendants, Separately Answering  
as Above Stated.

State of Nevada,  
County of Washoe,—ss.

H. J. Murrish, being first duly sworn, deposes and says; that he is the Vice-President of the Nevada Humboldt Tungsten Mines Company, a corporation, one of the defendants in the above-entitled action, and makes this verification on behalf of the said defendant as well as for and on behalf of all other defendants separately answering as above stated; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters alleged upon information and belief, and as to those matters he believes it to be true.

H. J. MURRISH.

Subscribed and sworn to before me this 15th day of May, 1920.

[Seal]

T. J. EDWARDS,  
Clerk. [1016]

**Exhibit No. 1.**

THIS CONTRACT, made and entered into this sixteenth day of August, one thousand nine hundred and nineteen, by and between Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and Tungsten Products Company, also a Nevada Corporation, the parties of the first part, and W. J. Loring, of the City and County of San Francisco, State of California, the party of the second part,

**WITNESSETH:**

That the parties of the first part, for and in consideration of the sum of One (\$1.00) Dollar, lawful money of the United States, to them paid by the party of the second part, the receipt whereof is hereby admitted, and in consideration of the moneys to be paid by the party of the second part at the times and in the manner hereinafter provided, do by these presents covenant and agree with the party of the second part to sell, assign, grant, convey and set over unto the said party of the second part, and his heirs and assigns, and the party of the second part hereby agrees to buy all the real and personal property now owned by the parties of the first part, including all rights, easements, contracts for power, capital stock of other corporations owned by the parties of the first part, or by either of them, and

in brief every article of real, personal or mixed property, of every kind and description, now owned by the parties of the first part, or either of them (excepting only the books and corporate records of the parties of the first part), and expressly including the following real and personal property, to wit:

### REAL PROPERTY.

All those certain mining claims and mineral bearing lodes, veins and deposits situated in an unknown mining district, [1017] in the County of Pershing, formerly County of Humboldt, State of Nevada, described as follows:

The Gross Mine No. 2, Gross Mine No. 3, White Rock Mine, and Sky High, lode mining claims, situated about seven miles northwest of Mill City station, on the Southern Pacific Railroad, copies of the location notices of which were duly recorded in the office of the County Recorder of said Humboldt County, in Book "S" of Notices, at page 502, reference to which said records for purposes of greater certainty of description is hereby expressly made, being the same property described in that certain Deed thereof to Nevada Humboldt Tungsten Mines Company, a Nevada corporation, dated February 17, 1917, and recorded in Book 53 of Deeds, page 146, records of the County Recorder of said Humboldt County, State of Nevada;

Together with all the dips, spurs and angles, leads, lodes, metals, ores, gold, silver and tungsten bearing quartz rock and earth therein; and all the rights, privileges and franchises thereto incident,



appendant and appurtenant or therewith usually had and enjoyed;

Also, that certain lot, piece or parcel of land situated in the County of Pershing, (formerly the County of Humboldt) State of Nevada, and described as follows, to wit:

Beginning at the East quarter corner of Section Twenty-seven (27), Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence South, along the East line of said Section, to the Southwest corner thereof; thence west, along the South line of said Section, to the South quarter corner thereof; thence northwesterly, in a straight line, to the place of beginning, containing eighty (80) acres, according to the United States Public Surveys; together with all the rights, privileges and appurtenances thereunto belonging or in any wise [1018] appertaining. Being the same ground deeded to the Nevada Humboldt Tungsten Mines Company, a Nevada Corporation, in that certain deed, dated April 25, 1918, recorded in Book 53, page 76, of Deeds, records of the office of the County Recorder of said County of Humboldt, State of Nevada;

Also, that certain piece or parcel of land lying, situate and being in the County of Pershing (formerly County of Humboldt), State of Nevada, more particularly described as follows:

Beginning at the Southeast corner of Section Twenty-seven (27), Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence North one Hundred

feet; thence east five hundred (500) feet; thence south six hundred (600) feet; thence west six hundred (600) feet; thence north five (500) hundred feet; thence east one hundred (100) feet; to the place of beginning. Being the same property described in that certain Deed thereof to Tungsten Products Company, a Nevada corporation, described in Book 1 of Deeds, page 18, official records in the office of the County Recorder of Pershing County, State of Nevada, to which said record reference is hereby expressly made; together with the mill, plant, improvements, tenements, and hereditaments thereon, and all the rights, privileges, easements and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed;

Also, that certain easement for the flow of tailings from the mill, or any other plant or structure, on, or that may be constructed on, said last above described tract flowing on or over the northeast quarter of Section Thirty-five (35), Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; together with all the rights, privileges and franchises thereto incident, appendant, and appurtenant, or [1019] therewith usually had and enjoyed. Being the same easement described in that certain Deed thereof recorded in Book 1 of Deeds, page 20, official records in the office of the County Recorder of the County of Pershing, State of Nevada, to which said record reference is hereby expressly made;

## PERSONAL PROPERTY.

And also, all of the personal property of every kind and description owned by the parties of the first part and each of them, including all of the issued capital stock of the Mill City Development Company owned by said parties of the first part, or either of them, with the Certificates representing the same properly endorsed in blank, and all ore in demps, at the mill or in the mine; all buildings erected upon any of the lands hereinbefore described; all tungsten concentrates including all concentrates in the mill or elsewhere owned by either of the parties of the first part and all concentrates in the possession of the party of the second part, the Pacific Tungsten Company, or Wells Fargo Nevada National Bank of San Francisco, and including all moneys due upon concentrates heretofore sold by either of the parties of the first part to the Western Ore Purchasing Company of Reno, Nevada; all mills, machinery, concentrating tables, engines, compressors, motors, belting, cables, hoists and every other article of machinery or equipment which is now situated on the property of the parties of the first part or either of them above described, or in the concentrating mill thereon, or elsewhere; all mine cars, track, buckets, skips, drilling steel, jack-hammers, stoping or drilling machinery of every kind and description and all of the tools and implements used in or about the mine and mill owned by the parties of the first part, or either of them, including all picks, shovels, blacksmith tools and equipment, carpenters and millwrights' tools; all

wagons and [1020] trucks; all mine and mill supplies of every kind, wheresoever situated, including powder; all boarding-house and bunk-house furnishings and equipment; and in brief every article of personal property including credits owned by the parties of the first part or either of them, excepting only their books, corporate seal, and records, and except any item of cash in bank above the amount of \$195.46, and except supplies now at Mill City amounting to \$1106.25 (being the following items: Baker, Hamilton & Pacific Co., \$3.27, \$25.78, and \$19.10; The Gallagher Machinery Co., \$120.00; The Giant Powder Co., \$813.40; Allis-Chalmers Mfg. Co., \$353.60, and the Stearns-Roger Co., \$71.10).

The parties of the first part also agree to sell, assign, transfer and set over unto the said party of the second part, and his assigns, all of their right, title, interest, claim or demand in, to, or of any and all moneys which may hereafter be found to be due to them, or to either of them, from the Government of the United States by reason of any claim for relief which they, or either of them, have filed or presented under that certain act of Congress of the United States known as the War Minerals Relief Act.

The said party of the second part hereby covenants and agrees to pay or cause to be paid to the parties of the first part as the full purchase price of the entire properties of the parties of the second part as above described, including said right to moneys by reason of said War Minerals Relief Act, the sum of Three Hundred Thirty-three Thousand

Three Hundred Thirty-three and Thirty-three One-hundredths (\$333,333.33) Dollars, in lawful money of the United States at the times and in the manner following:

The sum of Fifty Thousand (\$50,000.00) Dollars on or before September 1st, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars [1021] on or before the first day of October, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars on or before the fifteenth day of November, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars on or before the twenty-seventh day of December, 1919;

The further sum of Thirty Thousand Three Hundred Thirty-three Dollars and Thirty-three cents (\$33,333.33) on or before the 4th day of February, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of May, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of August, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of November, 1920; and

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of February, 1921.

All payments of the installments of the purchase



price above set forth shall be made in cash, or by certified check, or by cashier's check, or bank telegraph transfer, to the credit of the parties of the first part, at the First National Bank of Lovelock, Nevada, by payment thereof to its cashier, J. T. Goodin, who is Trustee for the Creditors of said parties of the first part, who shall first pay off the loan of Ten Thousand (10,000.00) Dollars procured to pay off labor claims, and shall thereafter pay out said installments so received to said respective creditors in accordance with his trust, but the payment thereof by said party of the second part to said Cashier and Trustee, or his successor as such, shall be a complete performance by said party of the second part of the payment of each installment so paid and said party of the second part shall not be obligated to ascertain [1022] whether said payments by said Cashier or Trustee shall have been properly distributed.

IT IS FURTHER UNDERSTOOD AND AGREED that the said party of the second part shall receive credit upon the installment of the purchase price falling due on the first day of September, 1919, for the sum of Thirteen Thousand One Hundred Fifty-eight and Fifty-two one-hundredths (\$13,158.52) Dollars, being the amount of a certain claim against the Nevada Humboldt Tungsten Mines Company assigned by Rochester Mines Company, a Nevada Corporation, to the party of the second part, and also for the sum of Four Thousand Two Hundred Eleven and Sixty-two One-hundredths (\$4,211.62) Dollars, being the

amount of a certain claim against the Nevada Humboldt Tungsten Mines Company, assigned by Rochester Combined Mines Company, a Nevada corporation, to the party of the second part; said claims or accounts now being the property of the party of the second part and due and owing to him.

IT IS EXPRESSLY COVENANTED AND AGREED that the party of the second part shall, upon the execution of this contract, have immediate possession of the properties above described, and all thereof and the right to conduct and operate said properties, and extract, ship, reduce and sell ore and concentrate therefrom, and shall apply the net proceeds of any concentrates derived from such operation by the party of the second part, first, to the payment of the debts of the corporation herein set forth, obtaining credit therefor upon the installments of the purchase price in the manner herein set forth, and thereafter shall have the right to apply such net proceeds upon said installments of the purchase price as may then remain.

IT IS FURTHER AGREED that the party of the second part, or his assigns, shall have the right to collect all of the accounts and bills receivable, due to said parties of the first part, [1023] or either of them, and to sell any of the tungsten concentrates covered by this agreement and any tungsten concentrates produced through the operation by him of any of said properties, and shall apply any moneys collected thereunder, whether out of account due said parties of the first part, or either of them, or collected from bills receivable, due, or

otherwise, and all moneys derived from the net proceeds of concentrates so sold shall be paid over and apply upon the purchase price of said properties and in payment of the installments as the same become due and said party of the second part shall receive credit therefor upon the next installment falling due after the payment thereof.

In case of any default in the payment of any of said installments of the purchase price when due, then, at the option of said parties of the first part, this agreement shall terminate and be of no further force and effect, and said parties of the first part shall not be obligated to do anything further thereunder, and they shall be entitled to retake possession of said real property, together with any personal property thereon, and to retain any payments hereunder theretofore made as full and liquidated damages for the failure of the party of the second part to complete this agreement, and for rentals for the use and occupation thereof, and for damages caused by the extraction of ore therefrom and its change of appearance resulting therefrom and otherwise, but the option set forth in this paragraph shall not be deemed to abridge any right to which the parties of the first part may be entitled under the provisions of this agreement.

The parties of the first part further covenant that within seven days from the date of this contract they will make [1024] and execute and deliver to the party of the second part or his assigns, good and sufficient deeds conveying all of the real property owned by the parties of the

first part and each of them, and will also make, execute and deliver good and sufficient bills of sale conveying all of the personal property owned by the parties of the first part and each of them, and also good and sufficient assignments of the various contract, franchises, rights or easements and capital stock of other corporations which the parties of the first part or either of them may own. Simultaneously with the delivery of said deeds to the party of the second part, by the parties of the first part, the party of the second part shall make, execute and deliver to the order of said parties of the first part, a properly executed mortgage containing the usual covenants covering the real property described in the deeds from each of said parties of the first part to the party of the second part, securing to said parties of the first part the payment of the installments of the purchase price of all of the properties at the dates and in the place set forth in this agreement. Said mortgage shall also contain a clause covering the liquidation of creditor's claims as herein set forth.

Time shall be of the essence of this agreement but there shall be a five days' grace allowed on the date set for the payment of each installment before the party of the second part shall be considered to be in default thereon.

It is further stipulated and agreed that this contract shall run in favor of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties; and it is further agreed that the party of the second part shall

have the right and power to assign this contract.

IN WITNESS WHEREOF the said Nevada Humboldt Tungsten [1025] Mines Company has by resolution of its Board of Directors caused its corporate name to be hereto subscribed by its President and Secretary and its corporate seal to be hereto affixed and said Tungsten Products Company has also, by resolution of its Board of Directors, duly adopted, caused its corporate name to be hereto subscribed by its President and Secretary and its corporate seal to be hereto affixed, and the party of the second part has hereunto set his hand, in duplicate, the day and year first above written.

NEVADA HUMBOLDT TUNGSTEN  
MINES COMPANY,

By L. A. FRIEDMAN,  
President.

[Corporate Seal] Attest: R. NENZEL,  
Secretary.

TUNGSTEN PRODUCTS COMPANY,

By L. A. FRIEDMAN,  
President.

[Corporate Seal] Attest: R. NENZEL,  
Secretary.

W. J. LORING.

I hereby approve the foregoing contract on behalf of the Creditors of the parties of the first part and consent to the same.

J. T. GOODIN,  
Trustee for Creditors. [1026]



**Exhibit No. 2.**

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, being the owners of more than ninety-five per cent (95%) of the total authorized capital stock of the Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby approve and ratify the foregoing and attached contract made and entered into by said Nevada Humboldt Tungsten Mines Company on the one part and W. J. Loring on the other part; and we do hereby ratify, approve and confirm the acts of the President and Secretary of the above corporation in executing the said contract on behalf of said Nevada Humboldt Tungsten Mines Company.

IN WITNESS WHEREOF, we have hereunto set our hands this sixteenth day of August, A. D. 1919.

L. A. Friedman .....	owning	91,640 shares
Lena J. Friedman .....	owning	250,000 shares
R. Nenzel .....	owning	102,000 shares
G. K. Hinch .....	owning	10,000 shares
H. J. Murrish .....	owning	101,000 shares
C. H. Jones .....	owning	100,000 shares
John G. Huntington ...	owning	50,000 shares

By R. Nenzel, atty. in fact,

Frank Carlstrom .....	owning	60,000 shares
C. W. Poole .....	owning	219,160 shares
V. A. Twigg .....	owning	3,000 shares
J. T. Goodin .....	owning	5,000 shares

I, R. Nenzel, Secretary of Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby certify that the persons whose names are signed to the attached ratification of stockholders of the Nevada Humboldt Tungsten Mines Company are the owners of more than ninety-five (95%) per cent of the total authorized capital stock of said corporation standing in their names on the books of said corporation on this date, and are each the owners of the number of shares set opposite their respective names. [1027]

IN WITNESS WHEREOF I have hereunto set my hand as Secretary of said Nevada Humboldt Tungsten Mines Company this 16th day of August, 1919, and affixed hereto the corporate seal of said corporation.

[Corporate Seal] R. NENZEL,  
Secretary of Nevada Humboldt Tungsten Mines  
Company, a Nevada Corporation. [1028]

**Exhibit No. 3.**

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, being the owners of more than ninety-five per cent (95%) of the total authorized capital stock of the Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby approve and ratify the foregoing and attached contract made and entered into by said Tungsten Products Company on the one

part and W. J. Loring on the other part; and we do hereby ratify, approve and confirm the acts of the President and Secretary of the above corporation in executing the said contract on behalf of said Tungsten Products Company.

IN WITNESS WHEREOF, we have hereunto set our hands this, the sixteenth day of August, A. D., 1919.

L. A. Friedman.....	owning	1,000 shares
L. A. Friedman, Trustee, ...	owning	94,680 shares
H. J. Murrish .....	owning	1,000 shares
R. Nenzel .....	owning	1,000 shares
C. H. Jones .....	owning	1,000 shares
John G. Huntington .....	owning	1,000 shares

R. Nenzel, Atty. in Fact.

I, R. Nenzel, Secretary of the Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby certify that the persons whose names are signed to the attached ratification of stockholders of Tungsten Products Company are the owners of more than ninety-five (95%) per cent of the total authorized capital stock of said corporation standing in their names on the books of said corporation on this date and are each the owners of the number of shares set opposite their respective names.

IN WITNESS WHEREOF I have hereunto set my hand as Secretary of said Tungsten Products Company this 16th day of August, 1919, and affixed

hereto the corporate seal of said corporation.

[Corporate Seal] R. NENZEL,  
Secretary of Tungsten Products Company, a Nevada Corporation. [1029]

**Exhibit No. 4.**

In the United States District Court in and for the  
District of Nevada.

AT LAW.

DAVID TAYLOR,

Plaintiff,

vs.

C. W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, G. K.  
HINCH, J. T. GOODIN, V. A. TWIGG, J. G.  
HUNTINGTON, and LENA J. FRIEDMAN,  
Defendants.

**BILL OF COMPLAINT.**

Comes now the plaintiff in the above-entitled action and complains of the defendants, and for cause of action alleges:

**I.**

That plaintiff is a citizen and resident of the State of Colorado and of the city and county of Denver in said state.

**II.**

That the defendants, and each of them, are citizens and residents of the State of Nevada, and of Lovelock, Pershing County in said state.

**III.**

That this is a controversy between citizens and

residents of different states, and the amount in controversy, herein, exclusive of interest and costs, exceeds the sum of Three Thousand (\$3,000.00) Dollars.

#### IV.

That on or about the 16th day of January, 1919, [1030] the defendants executed, made and entered into a contract with the plaintiff for the sale of all of their respective interests in the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, said interests of the respective parties being represented by certain shares of stock in said companies; said Nevada Humboldt Tungsten Mines Company being then and there the owner of certain mines and mining claims and mining rights in certain real estate, all situated near Mill City in what is now the County of Pershing in the state of Nevada; that the Tungsten Products Company was a subsidiary of said Nevada Humboldt Tungsten Mines Company and owned and operated a mill for the treatment and concentration of certain scheelite ores produced by the Nevada Humboldt Tungsten Mines Company at its property aforesaid, and that the Mill City Development Company was a corporation owning certain real estate, also a pipe-line and water rights, and about fifty (50%) per cent of the capital stock of said corporation being then and there owned by the Nevada Humboldt Tungsten Mines Company or the Tungsten Products Company hereinbefore mentioned. That a copy of said contract for the



sale of said respective interests of the defendants is attached to this Complaint, made a part hereof and marked "Exhibit A."

V.

That sometime immediately preceding the making and execution of the contract of January 16th, Exhibit "A," there had been brought to the attention of the plaintiff a report of one Howland Bancroft, a mining engineer, of and concerning the mines, mining property and mining rights of the Nevada Humboldt Tungsten [1031] Mines Company, which said report showed the amount of development which then existed upon said mining property, and showed that about nine thousand (9,000) tons of scheelite ore of an average of 1.75% tungstic acid had been developed, placed in sight, blocked out and ready for mining in said mining property of the Nevada Humboldt Tungsten Mines Company; that at all of the times mentioned in this Complaint the defendants, Murrish, Nenzel and Poole were directors of the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company, and the defendant Poole had general charge of all mining and milling operations of said Nevada Humboldt Tungsten Mines Company and its subsidiary, the Tungsten Products Company; that the facts and truth concerning said mines and mining claims of the Nevada Humboldt Tungsten Mines Company and of the development work which had been performed and the new development work in process on and within said mines, mining claims and mining rights of said Nevada

Humboldt Tungsten Mines Company, and the amount of ore developed, placed in sight, blocked out and ready for mining in said mining property of the Nevada Humboldt Tungsten Mines Company were at all times mentioned in this Complaint peculiarly within the knowledge and information of the defendants, and particularly of the defendants, Poole, Nenzel, Murrish and Friedman. That in or about the month of March, 1919, plaintiff informed the defendants that he would not exercise his option to purchase said interests of the defendants in said corporations under said contract of January 16th; that thereupon the defendants, Poole, Murrish, Nenzel and Friedman, acting for themselves and for the other defendants, falsely and fraudulently, by means of letters and telegrams, informed the plaintiff that further and new development work had been carried on within the mines, mining claims and mining rights, and property of the [1032] Nevada Humboldt Tungsten Mines Company which had developed and placed in sight, blocked out and ready for mining large quantities of scheelite ore of commercial value and capable of being concentrated, and the concentrates so returned being of great value; and thereupon, and on or about the 2d day of April, 1919, the defendants Poole, Murrish and Nenzel came to Denver, Colorado, for the purpose of inducing the plaintiff to take a new contract for the disposition of their respective interests, or a part thereof, and the plaintiff, relying upon said representations of the defendants Poole, Murrish and Nenzel, who

then and there represented themselves, and were acting, as the representatives, agents and attorneys in fact for the other defendants, entered into a contract whereby plaintiff undertook to raise sufficient money to pay the debts and obligations of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, for which said service the plaintiff was to receive sixty-two (62%) per cent of the issued capital stock of the Nevada Humboldt Tungsten Mines Company, sixty-two (62%) per cent of the issued capital stock of the Tungsten Products Company and sixty-two (62%) per cent of one-half of the issued capital stock of the Mill City Development Company, a full, true and correct copy of said contract being attached to this Complaint, made a part hereof, and marked Exhibit "B," said contract was executed at Denver, Colorado; that the defendants Poole, Murrish and Nenzel acting for themselves and as the agents of and for the other defendants, for the purpose of inducing the plaintiff to enter in and upon said supplemental contract, Exhibit "B," of date of April 12, 1919, then [1033] and there falsely and fraudulently, and with intent to deceive the plaintiff, represented to plaintiff that when the contract of January 16, 1919, was entered into, Exhibit "A," there was blocked out, developed and in sight in said mine about nine thousand (9000) tons of scheelite ore carrying 1.75% tungstic acid, and that since said date great and additional ore bodies of equal grade had been developed; that a large

amount of new development work had been done and performed upon said mines and that there was then on said 2d day of April, blocked out, in sight and ready for mining and reduction into concentrates over sixty thousand (60,000) tons of scheelite ore which would carry from 1.50% tungstic acid to 1.75% tungstic acid; that each and all of said representations were false and untrue and were known by the defendants at the time they were made to be false and untrue, and were made for the purpose of deceiving the plaintiff and for the purpose of causing him to undertake and carry out the provisions of said supplemental contract of April 2, Exhibit "B," attached hereto; that in truth and in fact at said time there was opened up and developed and in sight in said mine not to exceed nineteen thousand (19,000) tons of scheelite ore of an average value not to exceed 1.75% tungstic acid.

## VI.

That plaintiff, relying upon and believing said false and fraudulent representations of the defendants, so made on or about the 2d day of April, 1919, immediately gave practically his sole time and attention to the carrying out of the terms of said contract by which he was to raise for the benefit of the corporations, Nevada Humboldt Tungsten Mines [1034] Company, Tungsten Products Company and Mill City Development Company, sufficient moneys for the payment of their debts and outstanding obligations, and in so doing and in his endeavor to carry out said provisions of said contract, and

for the purpose of consummating the same, laid out and expended for traveling expenses of plaintiff to Lovelock, Nevada, San Francisco, California, New York City and to various other places, for assaying, maps, surveys, expert services for mining examinations and reports, legal fees for the examination of titles and of the organization of the corporations, telegrams and telephones the sum of Eight Thousand Eight Hundred Twenty and 21/100 (\$8,820.21) Dollars.

## VII.

That plaintiff also gave his time and efforts to said enterprise and the consummation of said contract during all of the time from April 2 to on or about June 1, 1919; that, as a result of the expenditures, time and efforts of the plaintiff, plaintiff succeeded and had pledged by himself and others associated with him an amount sufficient to meet any and all obligations of his under the terms of said contract, and sufficient to entitle him to receive sixty-two (62%) per cent of the stock of the Nevada Humboldt Tungsten Mines Company, sixty-two (62%) of the stock of the Tungsten Products Company, and sixty-two (62%) per cent of one-half of the Mill City Development Company under the terms of said contract of April 2, 1919, Exhibit "B."

## VIII.

That on or about the first of June, 1918, plaintiff discovered the falsity of the representations of the defendants, and thereupon his associates, who had agreed to furnish a large [1035] portion of the money necessary for the completion of the obli-



gations of plaintiff under said contract, withdrew from said undertaking and refused to go into the same or to advance any money whatsoever for it.

IX.

That had the representations of defendants, as to the amount and quality of ore opened up, developed and in sight in said mine, been true, said ores would have had a net value, over and above all expenses of cost of mining, transportation and sale, of Three Hundred Twenty Thousand (\$320,000) Dollars; that the debts and obligations of said corporations were then, and are now, of about One Hundred Fifty Thousand (\$150,000) Dollars; that the net value of said mines and of the stock of said companies, after the payment of all debts, had the representations of defendants been true, would have been about One Hundred Seventy Thousand (\$170,000) Dollars; that in truth and in fact said corporations, and each of them are now insolvent; that the total value of their assets, including all ore developed, in sight and available, did not then, or now, exceed the sum of One Hundred *Twenty* (\$120,000) Dollars; that the ore in sight in said mine was not then, to wit on the 2d day of April, or now, of any other, further or greater value than Seventy Thousand (\$70,000) Dollars; that the value of the stock which plaintiff would have received under the terms of said contract, and to which he was entitled, had the representations of defendants been true, would have been One Hundred Five Thousand Four Hundred (\$105,400) Dollars.

X.

That by reason of the false and fraudulent representations [1036] aforesaid plaintiff has been damaged in the sum of One Hundred Fourteen Thousand Five Hundred Seventy-nine and 44/100 (\$114,579.44) Dollars.

WHEREFORE, Plaintiff prays judgment against the defendants, and each of them, in the sum of One Hundred Fourteen Thousand Five Hundred Seventy-nine and 44/100 (\$114,579.44) Dollars.

(Signed) NORCROSS, THATCHER &  
WOODBURN,

Attorneys for Plaintiff, [1037]

EXHIBIT "A-2."

THIS AGREEMENT made between David Taylor, of Denver, Colorado, party of the first part, and L. A. Friedman, C. W. Poole, R. Nenzel, C. H. Jones, H. J. Murrish, G. K. Hinch, John G. Huntington, J. T. Goodin, V. A. Twigg, and Lena J. Friedman, all residents of Lovelock, Nevada, being the holders of ninety-nine (99%) per cent of the capital stock of the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company and L. A. Friedman, as Trustee, parties of the second part,

WITNESSETH:

THAT, WHEREAS said L. A. Friedman, C. W. Poole, R. Nenzel, C. H. Jones, H. J. Murrish, G. K. Hinch, John G. Huntington, J. T. Goodin, V. A. Twigg, and Lena J. Friedman, are the owners and holders of stock in each of the above companies,

the number of shares of stock in each company being set opposite their respective signatures hereto, and

WHEREAS, L. A. Friedman is Trustee for all other of said second parties hereto, all of their interest in the Mill City Development Company, which said corporation is in the process of organization, and which said corporation has not as yet issued its stock, and

WHEREAS said second parties desire to sell all of their interest in the said Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company and said Mill City Development Company, all of which corporations are corporations organized and existing under the laws of the State of Nevada, and

WHEREAS said first party is desirous of securing an option to purchase the entire interest of all of said second parties in all of said corporations, and

WHEREAS said first party has this day entered into a [1038] contract with the Nevada Humboldt Tungsten Mines Company, and said Tungsten Products Company to advance said corporations the sum of One Hundred Thousand Dollars (\$100,000.00) to enable said corporations to continue their business and operations and to discharge a portion of their indebtedness.

1. NOW, THEREFORE, in consideration of the premises and in consideration of the said first party hereby entering into said agreement to advance said One Hundred Thousand Dollars

(\$100,000.00) to said corporations, said second parties hereby grant and give to said first party an option to purchase all of the stock held by said second parties in the Nevada Humboldt Tungsten Mines Company and in the Tungsten Products Company, and all of the interests of said second parties in the Mill City Development Company at the price and in the manner hereinafter specified. This option shall be good up to and including the sixteenth (16th) day of July, 1919.

2. The price to be paid for all of said stock in all of said corporations owned by all of said second parties shall be Fifty Cents (.50) per share for each share of stock held by said second parties in the Nevada Humboldt Tungsten Mines Company, and said second parties shall transfer, assign and set over unto said first party without further charge or cost to said first party, all of the stock owned by said second parties in the Tungsten Products Company and the Mill City Development Company which they now own or shall be entitled to upon the complete organization of the Mill City Development Company; Total purchase price shall be \$498,400.00.

3. Said second parties will during the life of this option pay all of the debts and obligations of all of the said corporations; and agree that said corporations will maintain their plants and equipment in their present condition of efficiency, and will continue the present development work as it has heretofore been conducted. Said second parties will also complete [1039] the organization of the

Mill City Development Company and discharge all of their obligations to said Mill City Development Company.

4. It is further understood and agreed that no dividends of any kind, nature or description shall be paid by said corporations during the life of this option, and that none of the assets of said corporations shall be disposed of other than Scheelite concentrates provided that replacements of equipment shall be permitted.

5. It is further understood and agreed that no increase of salaries or bonuses shall be made, given, or paid to any officers or directors or stockholders of said corporations during the life of this option.

6. It is further understood and agreed that in case said option is exercised and said debts and obligations of said corporations are not paid at the time of the exercise of said option, the said first party shall deduct a sufficient amount from the purchase price to pay all outstanding debts and obligations and engagements of said corporations.

7. It is understood and agreed that the purchase price for said stock shall be paid as follows:

\$100,000.00 at the time said option is exercised  
\$25,000.00 on the first of each and every month thereafter until the total purchase price has been paid.

8. Said option shall be exercised by giving notice in writing to the Wells Fargo Nevada National Bank of San Francisco, and by mailing a written notice of such exercise of said option



addressed to each of said parties, addressed to Lovelock, Nevada Payments shall be made through the Wells Fargo Nevada National Bank of San Francisco, California. [1040]

9. Said second parties agree to deposit all of the stock of the Tungsten Products Company owned by said second parties, and Two Hundred Eighty-Five Thousand (285,000) shares of stock in the Nevada Humboldt Tungsten Mines Company within Ten (10) days from the execution of this option in the Wells Fargo Nevada National Bank of San Francisco. It is understood and agreed that the remaining shares of stock in said Nevada Humboldt Tungsten Mines Company, upon which option is hereby given, owned severally by said second parties are now up as collateral for certain loans to said individuals, and as to such stock, it is hereby agreed that within Ten (10) days from the execution of this agreement, each and every of the parties signatory hereto, who has such stock now up as collateral shall notify by letter the bank, person or company holding said stock as security of the giving of an option on said stock and shall further instruct said bank, firm or company in the event that the amount secured by such stock is not paid on or before July 15, 1919, to send the evidence of such debt together with the stock to the Wells Fargo Nevada National Bank for collection, with instructions to said bank, upon the payment of the obligation to place the stock, security therefor, with the escrow

herein mentioned, and forthwith mail to the first party a true and correct copy of said letter.

10. The said second parties agree to discharge said loans prior to the exercise of said option. In case said second parties do not discharge said loans, said second parties agree that the Wells Fargo Nevada National Bank shall from the proceeds of the first One Hundred Thousand Dollars (\$100,000.00) deposited, pay such indebtedness to said banks and secure said stock owned severally by said second parties and hold the same until the full [1041] purchase price has been paid. Upon the payment of the full purchase price of said stock all said stock shall be delivered to said first party.

11. Said second parties further agree to deposit in the escrow with said Wells Fargo Nevada National Bank resignations of all of their directors and to deliver one resignation to said first party for every One Hundred Thousand Dollars (\$100,000.00) is paid, Said second parties further agree that they will cause to be immediately elected to said Board of Directors of said corporation in place of the director resigning, the nominee of said first party. Upon the exercise of this option and the payment of said One Hundred Thousand Dollars (\$100,000.00,) the management of said corporations shall be turned over to said first party, and the said second parties will cause the Board of Directors of said corporations to name as general manager of Nevada Humboldt Tungsten Mines

Company and the Tungsten Products Company the nominee of said first party, which general manager shall have full power and authority to remove any and all superintendents, foremen, agents, servants and employees of said corporations and to employ any and all necessary superintendents, foremen, agents, servants and employees as may be necessary to operate said properties.

12. In the event said first party shall delay for a period of five (5) days to make any of the loans to said Nevada Humboldt Tungsten Mines Company and the said Tungsten Products Company called for in said loan agreement, the said second parties in their discretion may terminate this option by giving immediate notice thereof in writing to said first party.

13. Second parties agree that said One Hundred Thousand Dollars (\$100,000.00) loaned said Nevada Humboldt Tungsten Mines [1042] Company and said Tungsten Products Company shall be used solely to pay operating expenses, to purchase of reasonable supplies and reasonable equipment, and to discharge the indebtedness of said corporations.

14. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto

have hereunto set their hands and seal this 16th day of January, 1919.

(Signed)

DAVID TAYLOR,

First party.

L. A. FRIEDMAN,	106,640 shares
R. NENZEL,	102,000 shares
C. W. POOLE,	119,160 shares
H. J. MURRISH,	101,000 shares
(C. H. JONES,	100,000 shares
(G. K. HINCH,	10,000 shares
(JOHN G. HUNTINGTON,	50,000 shares
(J. T. GOODIN,	5,000 shares
(V. A. TWIGG,	3,000 shares

Signed by R. NENZEL,

Attorney in Fact.

LENA FRIEDMAN, 400,000 shares

Second parties.

L. A. FRIEDMAN,

Trustee.

[1043]

### EXHIBIT "B."

THIS AGREEMENT this day entered into between David Taylor, of Denver, Colorado, first party, and L. A. Friedman, Lena J. Friedman, C. W. Poole, John G. Huntington, R. Nenzel, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg and H. J. Murrish, second party,

### WITNESSETH:

WHEREAS the parties hereto, on or about January 16, 1919, entered into an agreement in

respect to the purchase and sale of certain stock of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, reference to which contract is hereby made and which said contract is made a part hereof, and

WHEREAS the Nevada Humboldt Tungsten Mines Company on the same date, entered into an agreement with the said David Taylor for the advance of certain moneys on scheelite concentrates, as more particularly appears in said agreement to which reference is hereby made, and

WHEREAS this agreement is supplemental to both of said agreements and all of said agreements are now to be read together and considered as one in so far as applicable, due reference being had to the changes herein made, and

WHEREAS, owing to the demoralization of the tungsten market it seems impossible for the said David Taylor to market scheelite concentrates or to interest parties in the purchase of tungsten properties, and for that reason it is deemed probable that said Taylor will not be able to exercise his option contained in the above-mentioned agreement, and

WHEREAS, by reason of the facts herein named it may become [1044] impossible for the Nevada Humboldt Tungsten Mines Company and the other companies above referred to to secure sufficient funds for the liquidation of their indebtedness, and

WHEREAS it is the purpose of this agreement



to so modify the said option as to enable the said Nevada Humboldt Tungsten Mines Company and its allied companies to pay its debts, continue its operation and secure itself from the jeopardy of possible loss through suits by its creditors,

NOW, THEREFORE, in consideration of the premises and of the sum of One Dollar (\$1.00) each to the other in hand paid, it is mutually understood, covenanted and agreed as follows, to wit:

1. The first party undertakes to secure by borrowing for the Nevada Humboldt Tungsten Mines Company, and its allied companies, a sum sufficient to liquidate the indebtedness of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company, and the proportion of the indebtedness of the Mill City Development Company which the second parties owe, said indebtedness estimated to be the sum of Two Hundred and Twenty Thousand (\$220,000.00) Dollars, on or before June 16, 1919.

2. When or if the said first party shall secure the said sum sufficient to liquidate the entire indebtedness, as above provided, then and in such event the second parties promise, covenant and agree to transfer and deliver to the first party in full payment for services rendered in securing such sum of money, 62% of the issued capital stock of the Nevada Humboldt Tungsten Mines Company, 62% of the issued capital stock of the Tungsten Products Company, 62% of one-half of the

issued capital stock of the [1045] Mill City Development Company; that a deposit of the amount necessary to liquidate the indebtedness as herein provided, in the Wells Fargo Nevada National Bank, shall be sufficient evidence of the performance of the conditions herein for the transfer and delivery of the stock as herein provided.

IT IS MUTUALLY UNDERSTOOD AND AGREED:

A. That the said sum raised by the first party herein is a loan to the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, and not a payment for stock; and that same is to be evidenced by the issuance of redeemable preferred stock with a maximum of 7% cumulative interest, provided that said stock shall not be sold for less than 95% of par net to the Company.

B. That the second parties hereto will cause a new company to be organized to which the assets of the companies herein described shall be conveyed; or shall amend the present articles of the Nevada Humboldt Tungsten Mines Company and its allied companies hereinbefore mentioned, in order to effectuate this agreement as shall be required by the first party.

C. It is agreed that in such corporation, or in the amendment above provided, due and proper provision shall be made (1) that 80% of the Board of Directors must approve the sale of any of the property of the Company or the purchase of additional property; (2) that the cumulative voting

power of the common stock shall not be taken away; (3) that the net receipts from any relief received from the United States Government under the War-Minerals Relief Act of the corporations herein mentioned or any of them, shall inure to the benefit of such new corporation as may [1046] be formed; (4) that profits shall be distributed whenever same have accumulated to the amount of Fifty Thousand (\$50,000.00) Dollars or over, after the debts are paid, unless contrary provided by a vote of 80% of the Directors; (5) and further, that the preferred stock shall be redeemed out of the profits on June 30 or December 31, of every year, whenever the sum of Fifty Thousand (\$50,000.00) Dollars is accumulated, and before any dividends are paid on the common stock.

D. IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED that the performance of this agreement shall release the first party from any and all obligations to pay the purchase price of said stock mentioned in the option hereinbefore referred to.

E. IT IS FURTHER MUTUALLY COVENANTED AND AGREED that this agreement shall expire by limitation on June 16, 1919, and shall carry with it the option hereinbefore mentioned as executed on January 16, 1919, which shall also expire by limitation on said date, and they shall be of no further force or effect if the first party shall not have negotiated the loan and secured the money provided in Paragraph 1 hereof.

Time is the essence of this agreement, and each and every clause hereof shall bind and benefit the heirs and assigns of the respective parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this 2d day of April, 1919.

(Signed) DAVID TAYLOR,  
First Party. [1047]

C. W. POOLE,  
R. NENZEL,  
H. J. MURRISH,  
(L. A. FRIEDMAN,  
(LENA J. FRIEDMAN,  
(C. H. JONES,  
(G. K. HINCH,

By R. NENZEL,

Attorney in Fact.

(J. T. GOODIN,  
(V. A. TWIGG,  
(J. C. HUNTINGTON,

C. W. POOLE,

Attorney in Fact.

Second Parties. [1048]

United States of America,  
State of Nevada,  
County of Washoe,—ss.

David Taylor, being first duly sworn, deposes and says that he is the plaintiff in the above-entitled action, that he has read the foregoing complaint, and knows the contents thereof and that the same is true of his own knowledge, except as to matters

therein stated on information and belief and as to such matters he believes it to be true.

DAVID TAYLOR.

Subscribed and sworn to before me this 9th day of August, 1919.

OBELINE SOUCHEREAU,

Notary Public. [1049]

**Exhibit No. 5.**

In the United States District Court, in and for the  
District of Nevada.

DAVID TAYLOR,

Plaintiff,

vs.

C. W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, G. K.  
HINCH, J. T. GOODIN, V. A. TWIGG, J.  
G. HUNTINGTON and LENA J. FRIED-  
MAN,

Defendants.

**ANSWER.**

Come now the defendants in the above-entitled action and for answer to plaintiff's complaint on file herein, admit, deny and allege as follows, to wit:

**I.**

Respecting the allegations of paragraph I of said complaint, defendants have not sufficient knowledge or information upon which to base a belief.



II.

Defendants admit the allegations contained in paragraph II of plaintiff's complaint, except as to the defendant, J. G. Huntington, and deny that at the time of the commencement of this action, the said defendant, J. G. Huntington, was a citizen or resident of Lovelock, in said Pershing County.

III.

Respecting the allegations of paragraph III of said complaint as above stated, the defendants have not sufficient knowledge or information upon which to base a belief as to [1050] plaintiff being a citizen and resident of the State of Colorado and therefore denies that this is a controversy between citizens or residents of different states and admits that the amount in controversy herein exclusive of interest and costs, exceeds the sum of \$3,000.

IV.

Defendants admit the allegations contained in paragraph IV of plaintiff's said complaint.

V.

Respecting the allegations of paragraph V, the defendants allege that they have not sufficient knowledge or information upon which to base a belief and therefore deny that sometime immediately or otherwise preceding the making and execution of the contract of January 16, 1919, referred to in plaintiff's complaint as Exhibit "A," there had been brought to the attention of the plaintiff, a report of the said Howland Bancroft, a mining engineer, of and concerning the mines, mining prop-

erty and mining rights of the Nevada Humboldt Tungsten Mines Company, which said report showed the amount of development which then existed upon said mining property or that the same showed that about nine thousand (9,000) tons or any other number of tons of scheelite ore of an average of 1.75% or any other per cent or quality of tungstic acid had been developed or placed in sight or blocked out or ready for mining in said mining property of the Nevada Humboldt Tungsten Mines Company.

Admit that at all of the times mentioned in said complaint, the defendants, Murrish and Nenzel were directors of the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company, but deny that defendant Poole was at all or any of [1051] the times mentioned in plaintiff's complaint, or at all, a director of the said Tungsten Products Company and deny that said defendant Poole was at all the times mentioned in plaintiff's complaint, a director of the Nevada Humboldt Tungsten Mines Company and in this connection allege that the defendant Poole was not a director of said Nevada Humboldt Tungsten Mines Company at any time preceding July 2, 1919.

Deny that the defendant Poole had general charge of all mining or milling operations of said Nevada Humboldt Tungsten Mines Company or its subsidiary, the said Tungsten Products Company. Deny that the facts or truth concerning said mines and mining claims of the Nevada Humboldt Tungsten Mines Company or of the development work

which had been performed or the new development work in process on and within said mines, mining claims, and mining rights of said Nevada Humboldt Tungsten Mines Company, or the amount of ore developed, placed in sight, blocked out or ready for mining in said mining property of the Nevada Humboldt Tungsten Mines Company at all or any of the times mentioned in said complaint, were peculiarly within the knowledge or information of any of the defendants except Poole, Nenzel and Friedman, and admit that in or about the month of March, 1919, plaintiff informed the defendants that he would not exercise his option to purchase said interests of the defendants in said corporations under said contract of January 16, 1919.

Further answering said paragraph V. defendants deny that in or about the month of March, 1919, or at any other time, or at all, the defendants Poole, Murrish, Nenzel and Friedman or any of them acting for themselves or for all or any of their codefendants or otherwise, falsely or fraudulently, by means of letters or telegrams or by any other means whatsoever or at all, [1052] informed the plaintiff that further or new development work had been carried on within said mining property which had developed or placed in sight, blocked out or ready for mining, a large, or any quantity of scheelite ore of commercial or other value, capable of being concentrated or that the concentrates so returned were of great or any value.

Deny that on or about April 2, 1919, the defendants, Poole, Murrish and Nenzel came to Denver,

Colorado, for the purpose of inducing the plaintiff to make a new contract for the disposition of their respective interests or a part thereof or for the purpose of inducing the plaintiff to make any contract relative to said property.

Deny that said plaintiff relied upon any false or fraudulent representations of the defendants Poole, Murrish and Nenzel, or any of them, or of the other defendants or any of them, in entering into the alleged or any contract with the defendants, and in this behalf, the defendants allege that the plaintiff and the defendants, on or about April 2, 1919, entered into a supplemental contract whereby plaintiff undertook to raise sufficient money to pay the debts and obligations of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, for which said service the plaintiff was to receive 62% of the issued capital stock of the Nevada Humboldt Tungsten Mines Company, 62% of the issued capital stock of the Tungsten Products Company and 62% of one-half of the issued capital stock of the Mill City Development Company, which said contract was executed at Denver, Colorado; that the said plaintiff, his agents, mining engineers and representatives, at all times, commencing at a time shortly prior to January 16, 1919, and up to on or about June 1, 1919, had access to all and singular the mines, [1053] mining claims and mining rights of the said Nevada Humboldt Tungsten Mines Company; that at the time said supplemental contract was entered into by said

plaintiff on or about April 2, 1919, the said plaintiff. had actual knowledge of all and singular what development work had been carried on and performed within the mines and mining claims and property of the said Nevada Humboldt Tungsten Mines Company; that at said time said plaintiff had actual knowledge of the quantity and concentrating value of what scheelite ores had been developed, placed in sight and blocked out, and the commercial value thereof; and that said plaintiff continued to and did have actual knowledge during the month of May, 1919, of all and singular the amount and character of said development work that had been carried on within said mines and mining claims and property of said company, and the amount of scheelite ore which had been developed, placed in sight and blocked out, and the commercial value thereof.

Further answering the allegations contained in said paragraph V, defendants deny that the defendants Poole, Murrish and Nenzel or any of them acting for themselves, or as the agents of and for the other defendants, or otherwise or at all for the purpose of inducing the plaintiff to enter into said supplemental contract of April 2, 1919, or for any other purpose or at all, then and there or at any time, falsely or fraudulently or with intention to deceive said plaintiff, or for any purpose whatsoever, represented to plaintiff that when the contract of January 16, 1919, was entered into, there was blocked out, developed or in sight in said mine, about 9,000 or any other number of tons of scheelite ore



carrying 1.75% or any quantity or value tungstic acid. [1054]

Deny that for the alleged or any purpose, said defendants then or there or at any time or at all, falsely or fraudulently or with intent to deceive said plaintiff, or for any purpose whatsoever, represented to plaintiff that since January 16, 1919, great or additional ore bodies of equal or any grade, had been developed or that a large or any amount of new development work had been done or performed on said mines or that there was then on said April 2, 1919, or at any time thereabouts or at all, blocked out, in sight or ready for mining or reduction into concentrates over 60,000 tons or any other amount of scheelite ore which would carry from 1.50% tungstic acid to 1.75% tungstic acid or that would carry any other value or quantity whatsoever. In this connection defendants allege that said plaintiff, his agents, mining engineer and representatives for the period of from shortly preceding the contract of January 16, 1919, up to and including on or about June 1, 1919, at all times had access to the mines, mining claims, and mining property of said Nevada Humboldt Tungsten Mines Company, and during said period and prior to the execution of the contract of April 2, 1919, as well as subsequent thereto, the said plaintiff personally visited, examined and inspected the quality and quantity of the scheelite ores in sight, blocked out and developed during said period of time and particularly the said period between January 16, 1919 and April 2, 1919, and had full, complete and ample

opportunity to see, appraise and understand all and singular, the conditions, amount of ore, quality and values there and all material matters pertaining to the subject matter. That during said period and particularly the period commencing on or about January 16, 1919, to or about April 2, 1919, the said plaintiff caused all and singular the said mining claims and the property of the said Nevada Humboldt Tungsten Mines Company, and the scheelite [1055] ores therein blocked out, in sight or developed, to be examined and inspected by plaintiff's mining engineer, selected by plaintiff for that purpose. Defendants deny that any representations made by said defendants or any of them to the plaintiff, were false or untrue and deny that any representation was at any time made by said defendants or any of them for the purpose of deceiving said plaintiff or for the purpose of causing him to undertake or carry out the provisions of said supplemental contract of April 2, 1919, or at all, save as to the truth and fact of said subject matter. Deny that in truth or in fact at said time, to wit: April 2, 1919, there was opened up and developed and in sight in said mine, not to exceed 19,000 tons of scheelite ore of an average value not to exceed 1.75% tungstic acid and in this connection, defendants allege that at said time there was opened up and developed, and in sight in said mine, quantities of scheelite or greatly in excess of 19,000 tons of an average value of 1.75% tungstic acid.

VI.

Respecting the allegations of paragraph VI of

plaintiff's complaint, the defendants deny that plaintiff relied upon or believed the said alleged or any false or fraudulent representations of the defendants, so alleged to have been made on or about April 2, 1919, or at all. That respecting the remaining allegations in said paragraph, defendants have no sufficient knowledge or information upon which to base a belief and therefore deny that said plaintiff, immediately or at all, gave practically or otherwise, his sole time or attention or any time or attention to the carrying out of the terms of said contract by which he was to raise for the benefit of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company, and the Mill City Development Company, sufficient moneys for the payment of the debts of said corporations and their [1056] outstanding obligations, and in like manner and for the reasons last above stated, defendants deny that the plaintiff attempted or endeavored to carry out said provisions of said contract for the purpose of consummating the same or that said plaintiff *layed* out or expended for his traveling expenses to Lovelock, Nevada, San Francisco, California, New York City and various other places or to any places whatsoever for assay maps, surveys, expert services or mining examinations, reports, legal fees, organization fees, telegrams, telephones, or for any purpose whatsoever, the sum of \$8,820.31, or any other sum or amounts whatsoever.

## VII.

Respecting the allegations of paragraph VII of plaintiff's complaint, defendants have no sufficient

knowledge or information upon which to base a belief and therefore deny each and every allegation in said paragraph contained.

### VIII.

Respecting the allegations of paragraph VIII of plaintiff's complaint, the defendants deny that on or about June 1, 1919, or at any other time, or at all, said plaintiff discovered the alleged or any falsity of the alleged, or any representations of the defendants or any of them. That as to each of the remainder of the allegations of said paragraph, defendants have no sufficient knowledge or information upon which to base a belief, and therefore deny all and singular said allegations.

### IX.

Respecting the allegations in paragraph IX of the plaintiff's complaint, defendants deny that they, or any of them represented to said plaintiff on or about April 2, 1919, or at any time or at all that the net or other value of said ores over and above all expenses, costs, mining and transportation charges was [1057] \$320,000, or made any representations to said plaintiff respecting said subject matter other than according to the truth and fact thereof. Admit that the debts and obligations of said corporations on or about April 2, 1919, approximated \$150,000, and in this connection, defendants allege that the debts and obligations of said corporations at the time of the commencement of this suit, aggregated the sum of \$200,000, or thereabouts. Deny that defendants or any of them represented to said plaintiff that the net value of said mines

and the stock of said corporations, after the payment of all debts, would have been about the sum of \$170,000, or that any representations whatsoever were made relative to said subject matter. Deny that defendants or any of them made the alleged representations and therefore further deny that the net value of said mines and the stock of said companies after the payment of all debts would have been about \$170,000.

Deny that said corporations or any of them, were at the time of the commencement of this action, insolvent, or that the total value of their assets including all ores developed, in sight and available did not on or about April 2, 1919, or at the commencement of this action, exceed the sum of \$120,000. Deny that the ore in sight in said mine on said April 2, 1919, as well as at the time of the commencement of this action, had no greater value than \$70,000, and deny that the value of the stock which plaintiff alleges he would have received under the terms of said contract and to which he claims to be entitled had the alleged representations of defendants been true, would have been \$105,400 or any definite sum or amount whatsoever and in this connection defendants allege that the value of said stock, had plaintiff carried out his said agreement and received the same, is wholly [1058] conjectural, speculative and uncertain and dependent upon the market and other conditions wholly beyond the control of either plaintiff or defendants.

X.

Respecting the allegations of paragraph X of



said complaint, the defendants deny that by reason of or in consequence of the alleged or any false or fraudulent representations made by them or any of them to said plaintiff at the time or in the manner as alleged in said complaint or otherwise at any time or in any manner whatsoever, said plaintiff has been damaged in the sum of \$114,579.44 or in any amount and deny that for or by reason of any matter or thing whatsoever or at all, the said plaintiff has suffered loss or damage in the sum of \$114,579.44 or in any sum or amount whatsoever or at all.

WHEREFORE: defendants pray that the plaintiff take nothing by his said complaint and action. That said complaint be wholly disallowed and denied and that defendants have judgment against said plaintiff for all their costs and disbursements herein incurred or expended.

COOKE, FRENCH & STODDARD,  
Attorneys for Defendants.

State of Nevada,  
County of, —, —ss.

H. J. Murrish, being first duly sworn, deposes and says that he is one of the defendants named in the above-entitled action and makes this certification on behalf of each and all of his codefendants as well as on his own behalf; That he has read the [1059] foregoing action and knows the contents thereof, that the same is true of his own knowledge except as to those matters alleged on information and

belief and as to those matters he believes it to be true.

H. J. MURRISH.

Subscribed and sworn to before me this 17th day of March, 1920.

[Seal]

ROY A. STODDARD,

Notary Public. [1060]

**Exhibit No. 6.**

In the United States District Court in and for the District of Nevada.

DAVID TAYLOR,

Plaintiff,

vs.

C. W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, G. H.  
HINCH, J. T. GOODIN, V. A. TWIGG,  
J. G. HUNTINGTON and LENA J.  
FRIEDMAN,

Defendants.

**REPLY.**

Comes now the plaintiff in the above-entitled action and for reply to the affirmative matter set forth and contained in the defendant's answer, admits, denies and alleges as follows, to wit:

**I.**

Replying to Paragraph V of defendants' answer, plaintiff denies that his agents, mining engineers and representatives, at all times, commencing short-

ly prior to January 16, 1916, and up to June, 1919, had access to all and singular, the mines, mining claims and mining rights of the Nevada Humboldt Tungsten Mines Company, save and except that plaintiff admits that during said period, plaintiff on one occasion, and his representatives, on another, were permitted to go down in the mines, mining claims aforesaid, and the workings thereof; plaintiff denies that at the time said supplemental contract was [1061] entered into by plaintiff, on April 2, 1919, that the plaintiff had actual knowledge of all and singular, the development work that had been carried on and performed within the mines and mining claims and property of said Nevada Humboldt Tungsten Mines Company, but, on the contrary, plaintiff alleges at all times, immediately prior to January 16, 1920, and up to and including on or about the 25th day of May, 1919, plaintiff relied upon the representations and statements of defendants, their agents, employees, representatives and attorneys in fact as to all and singular, the condition of said mines, mining claims and mining rights and the development which had been carried on and performed within said mines and mining claims of the Nevada Humboldt Tungsten Mines Company; plaintiff denies that at all times or at said times, plaintiff had actual knowledge of the quantity and concentrating value of what scheelite ore had been developed, placed in sight and blocked out and the commercial value thereof, but on the contrary, plaintiff alleges that the only knowledge he had of and concerning the same,

between the 2d day of April and on or about the 25th day of May, was that which he received from and which was communicated to him by the defendants, their agents, employees, representatives and attorneys in fact. Plaintiff denies that he had and continued to have actual knowledge during the month of May of all and singular, the amount and character of said development work that had been carried on within said mines and mining claims and property of said company and the amount of ore which had been developed, placed in sight, blocked out and the commercial value thereof, but on the contrary, plaintiff alleges that he [1062] had no knowledge or information of the amount and character of the said development work or the amount or character of scheelite ore which had been developed, placed in sight, or blocked out, or the commercial value thereof, save and except as he received the same through representations and communications received by him from the defendants, their agents, employees, representatives and attorneys in fact, and save and except that plaintiff admits that on or about the 25th day of May, 1920, he did obtain, and thereafter had actual knowledge of the amount and character of said development work, the amount of scheelite ore blocked out, placed in sight and developed, and the commercial value thereof.

Further replying to said Paragraph V, plaintiff denies that he, his agents, mining engineers and representatives, for a period of from shortly pre-

ceding the contract of January 16, 1919, up to on  
June

or about January 1, 1919, at all times had access to the mines and mining claims and mining property of the Nevada Humboldt Tungsten Mines Company; denies that during said period and prior to the execution of the contract of April 2, 1919, as well as subsequent thereto, plaintiff personally visited, examined and inspected the quality and quantity of scheelite ore in sight, blocked out and developed during said period of time and particularly the period between January 16, 1919 and April 2, 1919, save and except that plaintiff admits that between the 16th day of January, 1919 and the 27th day of January, 1919, plaintiff made a survey and examination of the ores blocked out and developed within the property aforesaid, and plaintiff admits that on or about the 25th day of May, he had another examination [1063] and report thereof made by a mining engineer for him of the quantity and quality of scheelite ore in sight, blocked out and developed in said mines and mining properties of the Nevada Humboldt Tungsten Mines Company.

Plaintiff also admits that on one occasion, between the 2d day of April, and the 25th day of May, he was in the mines and mining claims of the Nevada Humboldt Tungsten Mines Company but denies that he examined and inspected the quality and quantity of the scheelite ores in sight, blocked out and developed in said mines. On the contrary, plaintiff alleges that at said time, and at all other



times, he relied upon and believed the representations made to him by the defendants, their agents, representatives and attorneys in fact as to the quality and quantity of scheelite ore in sight, blocked out and developed in said mines at the times mentioned in said answer, and at all other times, save and except as reported to him by his mining engineer, at the times hereinbefore mentioned.

Plaintiff denies that he caused all and singular, said mining claims and property and the scheelite ores therein blocked out, in sight, or developed, to be examined and inspected by plaintiff's mining engineer, selected by plaintiff for that purpose, save and except as hereinbefore mentioned.

Plaintiff further denies that on April 2d, there was opened and developed and in sight in said mines and mining properties of the Nevada Humboldt Tungsten Mines Company, quantities of scheelite ore, greatly, or at all, in excess of 19,000 tons, of an average value of 1.75% tungstic acid. [1064]

## II.

Replying to the allegations in Paragraph IX of defendants' answer, plaintiff has not sufficient information with which to answer the allegations in said answer, wherein it is stated that the debts and obligations of said corporations at the time of the commencement of this suit aggregated the sum of \$200,000.00 or thereabouts, and therefore, upon said grounds, denies that at the time of the commencement of this suit, the aggregate debts and obligations of said corporations exceeded the sum of

\$200,000.00 or any other sum or amount larger or greater than \$165,000.00.

WHEREFORE, plaintiff prays judgment in his favor, according to the prayer of plaintiff's complaint.

HOYT, NORCROSS, THATCHER,  
WOODBURN & HENLEY,  
Attorneys for Plaintiff. [1065]

United States of America,  
State of Nevada,  
County of Washoe,—ss.

Geo. B. Thatcher, being first duly sworn, deposes and says: That he has read the foregoing reply and knows the contents thereof; that the same is true to the best knowledge, information and belief of affiant; that affiant makes this verification on behalf of the plaintiff for the reason that the plaintiff is absent from the State of Nevada, where his said attorneys reside.

GEO. B. THATCHER.

Subscribed and sworn to before me this 9th day of April, 1920.

BENJ. J. HENLEY,  
Notary Public in and for the County of Washoe,  
State of Nevada.

[Endorsed]: Original. No. B-7. In the United States District Court in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, et al., Defendants. Separate Answer of Nevada Humboldt Tungsten Mines Company et al. Filed

May 15th, 1920. T. J. Edwards, Clerk. Cooke, French & Stoddard, Attorneys for Defendants, Nevada Humboldt Tungsten Mines Company, et al. [1066]

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In the United States District Court, in and for the  
District of Nevada.

IN EQUITY—B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COMPANY,  
a Corporation, W. J. LORING, C. W.  
POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, C. K.  
HINCH, J. T. GOODIN, V. A. TWIGG, J. C.  
HUNTINGTON and LENA J. FRIEDMAN,  
Individually,

Defendants.

**Answer of Defendant W. J. Loring.**

Comes now the defendant W. J. Loring and files  
this his separate answer to the complaint herein:

I.

This defendant is without knowledge as to the  
allegations in paragraph one (1) of said complaint  
contained that plaintiff is and at all times in the

said complaint stated was a citizen and resident of the State of Colorado, residing in the City and County of Denver, in said State.

II.

This defendant is without knowledge as to the allegations in paragraph two (II) of said complaint that this action is a controversy between citizens and residents of different states.

III.

Defendant admits the allegations of paragraph three (III) of said complaint, but avers that the said [1067] contract Exhibit "A" expired by limitation on the 16th day of June, 1919.

IV.

Defendant admits the allegations of paragraph four (IV) of said complaint, but avers that the said contract, Exhibit "B" expired by limitation on the 16th day of June, 1919.

V.

This defendant admits that the supplemental contract annexed to plaintiff's complaint, marked Exhibit "C" and referred to in paragraph five (V) of said complaint was made and executed on the 2d day of April, 1919. But this defendant is without knowledge as to the other allegations of paragraph five (V).

VI.

This defendant is without knowledge as to the allegations of paragraph six (VI) of plaintiff's complaint.

VII.

This defendant is without knowledge as to the

allegations of paragraph seven (VII) of plaintiff's complaint.

Further answering the allegations of paragraph seven (VII) of plaintiff's complaint, this defendant avers that the plaintiff never at any time in accordance with or under the provisions of the contract of April 2d, 1919, copy of which is annexed to plaintiff's complaint, marked Exhibit "C," or otherwise secured by borrowing or otherwise for Nevada Humboldt Tungsten Mines Company and its allied companies a sum sufficient or any sum to liquidate the indebtedness of Nevada Humboldt Tungsten Mines Company and Tungsten Products Company and the proportion of indebtedness of the Mill City Development Company owed by the parties of [1068] the second part named in said contract, Exhibit "C" or any part or portion of said indebtedness, or of any or either of them, and denies that a sum sufficient to liquidate the said indebtedness, or any part or portion thereof, was ever secured as in said contract provided, or was ever in fact raised by the plaintiff or loaned to the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company, and the Mill City Development Company, or to any or either of them, or that a deposit of the amount necessary to liquidate the indebtedness as provided in said contract, Exhibit "C," or any part or portion of said indebtedness, was ever made in the Wells, Fargo Nevada National Bank, or in any other bank or place whatsoever.



VIII.

This defendant is without knowledge as to the allegations contained in paragraph eight (VIII) of plaintiff's complaint.

IX.

This defendant is without knowledge as to the allegations contained in paragraph nine (IX) of plaintiff's complaint to the effect that on or about the first day of June, 1919, plaintiff discovered the falsity of the representations of defendants in said paragraph referred to. This defendant is also without knowledge as to the allegations contained in paragraph nine (IX) of plaintiff's complaint that upon receipt of such information plaintiff communicate the same to his associates; and that associates of the plaintiff had agreed to furnish a large portion of the money necessary for the completion of the obligations of plaintiff under the terms of said contract of April 2d, Exhibit "C." This defendant admits that if it be true that [1069] the said plaintiff ever had any associates who had agreed to furnish him any moneys for the purpose of carrying out or completing any or all of his obligations under the terms of said contract, Exhibit "C," that the said associates withdrew from said undertaking on or about the first day of June, 1919, and refused to go into the same and refused to advance any money whatsoever for it. And in that connection this defendant avers that the plaintiff was never at any time in a position to furnish the money necessary for the

performance or completion of his obligations under the terms of said contract, Exhibit "C."

X.

Answering the allegations of paragraph ten (X) of plaintiff's complaint, this defendant avers that Exhibits "A," "B," and "C" annexed to plaintiff's complaint are copies of the only contracts with reference to the stock of the Nevada Humboldt Tungsten Mines Company which the plaintiff ever at any time had with the codefendants of this defendant or with any or either of them.

This defendant is also without knowledge as to the allegation in said paragraph ten (X) that before the expiration of said contract or on or about the — day of May, 1919, the plaintiff requested and demanded of said defendants that they organize a new corporation or amend the articles of the incorporation of Nevada Humboldt Tungsten Mines Company to comply with the provisions of the contract of April 2d, 1919, Exhibit "C."

Further answering the allegation in said paragraph ten (X) of plaintiff's complaint that said defendants wholly neglected and refused, and now continue and will continue to neglect and refuse, to perform said contract of April 2d, [1070] 1919, Exhibit "C," this defendant alleges that plaintiff prior to the 16th day of June, 1919, wholly failed, neglected and refused to perform the obligations upon his part to be kept and performed under and pursuant to the said contract of April 2d, 1919, Exhibit "C," and that said contract expired by limi-

tation in accordance with its terms, on June 16, 1919.

Further answering the allegations of said paragraph ten (X) to the effect that the parties of the second part to said contract, Exhibit "C," refuse and neglect and will continue to refuse and neglect to deliver to plaintiff sixty-two (62%) per cent of the stock of the Nevada Humboldt Tungsten Mines Company, sixty-two (62%) per cent of the stock of Tungsten Products Company and sixty-two (62%) per cent of one-half of the stock of the Mill City Development Company under the terms of said contract of April 2d, 1919, Exhibit "C" this defendant avers that the plaintiff wholly failed to negotiate the loan or to secure the money provided for in paragraph one (1) of said Exhibit "C" and that the said agreement pursuant to its terms expired as aforesaid by limitation on the 16th day of June, 1919. And this defendant further alleges that the agreement executed January 16th, 1919, Exhibit "B" also expired by limitation on said 16th day of June, 1919, and that from and after the said date said contracts were, and each of them was of no further force or effect.

Further answering the allegations contained in paragraph ten (X) of plaintiff's complaint, this defendant denies that the plaintiff has performed each and every of the covenants, obligations and agreements, or any covenant or obligation or agreement in said contract, Exhibit "C," to be by him kept and performed. [1071]

Further answering the allegations of paragraph ten (X) of plaintiff's complaint, this defendant is without knowledge as to the allegation to the effect that said stock of said corporations referred to in plaintiff's complaint at and before the commencement of this suit had no market value, and that the value thereof at the time the contract, Exhibit "C" was made and entered into between the plaintiff and said defendants depended upon the operation and development of the property acquired by the Nevada Humboldt Tungsten Mines Company, and particularly, the mines and mining property thereof. This defendant denies that the value of said stock cannot be exactly shown or definitely ascertained.

This defendant is without knowledge as to the allegation contained in said paragraph ten (X) of plaintiff's complaint to the effect that the continued working or development of said property, mines and mining claims, together with the matters and things in said complaint thereafter mentioned, would increase the value of said property. This defendant denies that the working or development of said property, mines and mining claims, together with the matters and things mentioned in plaintiff's complaint will increase the value of said stock.

Further answering the allegations of said paragraph ten (X), this defendant denies that the plaintiff has sustained, or could sustain any damage whatsoever by reason of the failure on the part of the defendants to transfer and deliver to said

plaintiff any stock pursuant to the contract, Exhibit "C," or that the plaintiff is entitled to the transfer or delivery to him of any stock whatsoever under the said contract. This defendant denies that the plaintiff is entitled to any damage whatsoever for or on account of the [1072] matters and things set forth in said complaint, but this defendant further avers that if it be true that plaintiff is entitled to damages for or on account of any matter alleged in his complaint, then it is not true that there is no method of ascertaining the amount of such damage or that the value of said stock is wholly conjectural, or speculative, or uncertain or dependent on many or varied conditions wholly beyond the control of either plaintiff or defendants. But in that behalf this defendant avers that the assets of said corporation now consist wholly of certain moneys heretofore paid to it and agreed hereafter to be paid to it by this defendant, and that the value of the said stock may therefore be readily ascertained.

XI.

Answering the allegations of paragraph eleven (XI) this defendant avers that the bill referred to in said paragraph of plaintiff's complaint as reported out of committee recommends that a duty of nine dollars (\$9.00) per unit be placed on tungsten ores for a period of three (3) years and no longer. This defendant is without knowledge as to the allegation in said paragraph eleven (XI) of plaintiff's complaint that if said bill should



become a law, the ores in said properties containing the same will greatly increase in value, the exact amount of which is impossible of ascertainment.

## XII.

Answering the allegations contained in paragraph twelve (XII) of plaintiff's complaint, this defendant denies that on the 16th day of August, 1919, or at any other time or at all, the Nevada Humboldt Tungsten Mines Company and its subsidiary, the Tungsten Products Company, entered into [1073] a contract with this defendant, W. J. Loring, for the sale of all of its mines, mining property and mining claims, and particularly of its assets of every kind and character. On the contrary this defendant avers that on the 16th day of August, 1919, this defendant, W. J. Loring, entered into a contract with the defendant, Nevada Humboldt Tungsten Mines Company and the defendant, Tungsten Products Company, a full true and correct copy of which is annexed to this defendants' response to the order to show cause heretofore filed in this action and marked Exhibit 1 and which said exhibit is hereby referred to and made a part hereof. That it is not true, as alleged in plaintiff's complaint, that the said contract was for the sale of all the mines, mining property and mining claims and assets of every kind and character of said corporations, or any or either of them. This defendant avers that on the contrary there was exempted from the said sale evidenced by the

said agreement, Exhibit 1, a substantial portion of the personal property and assets of said corporation, and that the assets of said Nevada Humboldt Tungsten Mines Company so reserved and excepted from the said sale were of value of several hundred dollars.

This defendant admits that the said contract was made and executed pursuant to resolutions of the respective boards of directors of said Nevada Humboldt Tungsten Mines Company, and the defendant, Tungsten Products Company.

This defendant further admits that thereafter said defendant corporations called meetings of their respective stockholders for the purpose of ratifying and confirming the said contract with this defendant, W. J. Loring. But this defendant denies that said meetings of stockholders were held without adequate or proper notice thereof to the stockholders [1074] of said corporation or to the plaintiff. This defendant admits that the plaintiff on the 23d day of August, 1919, was a stockholder on the books of said corporation, and avers that on said date he held in his name five thousand (5,000) shares of the capital stock of said corporation. That the total number of shares of stock of said corporation issued and outstanding at all times herein mentioned had been one million (1,000,000) shares. That at said meeting of Nevada Humboldt Tungsten Mines Company referred to in paragraph twelve (XII) of plaintiff's complaint, there was present, in person or by proxy, stockholders of said corporation owning and holding upon the books

of said corporation 941,800 shares; and that the plaintiff, Taylor, had full knowledge and notice of said meeting and an opportunity to attend the same and did actually send a communication to the said meeting of said stockholders held on the said 23d day of August, 1919.

This defendant denies that the said meeting was held without the giving of any notice as required by the laws of the State of Nevada.

This defendant admits that 15 days' written notice of said meeting before the date of holding thereof was not given; but this defendant denies that 15 days' notice of such meeting was required by the laws of the State of Nevada.

This defendant further avers that at the said meeting of stockholders of said defendant Tungsten Products Company, there were present stockholders of said corporation owning and holding the entire issued capital stock of said corporation; and further that stockholders owning and holding 99,680 shares, being the total issued capital stock of said corporation out of a total authorized capitalization of 100,000 shares had [1075] theretofore on the 16th day of August, 1919, duly signed and executed a written ratification of said contract, Exhibit 1, a full, true and correct copy of which ratification is hereunto annexed marked Exhibit 3 and is hereby made a part hereof.

Defendant further alleges that on the 16th day of August, 1919, stockholders of the defendant, Nevada Humboldt Tungsten Mines Company made and executed a written authorization and ratifica-

tion of the said contract, Exhibit 1, a full, true and correct copy of which said authorization and ratification is hereunto annexed, marked Exhibit 2 and is hereby referred to and made a part hereof.

Further answering the allegations of paragraph twelve (XII) of the plaintiff's complaint, this defendant denies that the plaintiff promptly objected to said sale and to said contract, or that he promptly demanded the rescission and cancellation thereof, but, upon the contrary, this defendant avers that the plaintiff, well knowing that this defendant had entered into the said contract, Exhibit 1, and well knowing that this defendant was paying large sums of money to the said corporations pursuant to the terms of said contract, stood by and made no demand for the rescission or cancellation of said contract at any time prior to the 29th day of October, 1919, and not until after One Hundred Thousand Dollars (\$100,000.00) had been so paid by this defendant to the said defendant corporations.

This defendant admits that the officers, directors and stockholders of said corporation, Nevada Humboldt Tungsten Mines Company refused to set aside or cancel the said contract, Exhibit 1, or the conveyances or transfers of real and personal property executed pursuant thereto or to commence any action in any court for the [1076] rescission of cancellation thereof. But this defendant denies that said officers, directors and stockholders were guilty of any neglect whatsoever in so refusing or that the said conveyances were

pretended conveyances. On the contrary, this defendant avers that the said transaction was in every respect and particular fair and just and valid.

This defendant admits that on the 27th day of October, 1919, plaintiff, as a stockholder, commenced in this Court an action against the Nevada Humboldt Tungsten Mines Company wherein he seeks to have the said conveyance set aside. But this defendant avers that the defendant, Tungsten Products Company, is not a party to the said action.

This defendant denies that at the time he took the deeds and the said contract for said property from the defendant corporation this defendant had full or any notice of the alleged or any rights and equities, or rights or equities of plaintiff, in the properties so agreed to be conveyed and conveyed to this defendant, or in or to any shares of the capital stock of the defendant corporations, or any or either of them, or that this defendant took the said property with full, or any, notice of any rights and equities, or rights or equities whatsoever, of the plaintiff, Taylor; or that the plaintiff, Taylor, had any right or equity therein, or that this defendant was duly and regularly, or duly or regularly, or otherwise, informed of any rights and equities, or rights or equities, of the plaintiff, Taylor, before this defendant had performed any part or portion of said contracts, or at any other time or at all.



And in that behalf this defendant further avers that the plaintiff never at any time had had any right, title or interest of any kind or character, whatsoever, in or to [1077] the properties or assets, real and personal, belonging to the defendant corporations, or to any or either of them.

That the only contracts or agreements of any kind or character which the said plaintiff ever has had relating to the stock of defendant corporations or to the stock of any or either of them are the contracts, of which copies are annexed to his complaint; and that, as aforesaid, plaintiff having wholly failed and neglected to perform the obligations upon his part to be kept and performed within the time therein provided for, or otherwise or at all, said contracts expired by limitation on the 16th day of June, 1919, and that the said plaintiff, Taylor, has not since the said 16th day of June, 1919, had any rights or equities under said contract Exhibit "C" of any kind or character, whatsoever, in or to any shares of the capital stock of said defendant corporations, or any or either of them.

### XIII.

Answering the allegations of paragraph thirteen (XIII), this defendant admits that at the time plaintiff's complaint herein was filed, the defendant Nevada Humboldt Tungsten Mines Company, had called a meeting of stockholders to be held at Lovelock, Nevada, on April 19th, to further authorize and ratify the sale of the property of defendant, Nevada Humboldt Tungsten Mines Company, to this defendant, W. J. Loring, and to authorize the

execution of instruments of conveyance to this defendant by said Nevada Humboldt Tungsten Mines Company by way of further assurance of his title to the property and assets embraced in the said agreement, Exhibit 1, and already transferred and conveyed to this defendant in and by the deeds and transfers theretofore executed pursuant to the said agreement, Exhibit 1. That it is true, as alleged by the plaintiff, that the defendants, Nenzel, Poole, Murrish, Friedman, Jones, Hinch, Goodin, [1078] Twigg, Huntington, and Lena J. Friedman, as stockholders of said Nevada Humboldt Tungsten Mines Company, at the said meeting so called, if the said meeting had been free to proceed, would have voted all of their shares in favor of such authorization and ratification. But this defendant denies that they intended to vote, or at any meeting heretofore called would have voted, any shares of said Tungsten Products Company or of the Mill City Development Company; or that any shares of the Nevada Humboldt Tungsten Mines Company which they would have voted at said meeting would have included any stock of said corporation which is rightfully the property of the plaintiff, or that they would have voted at said or any meeting heretofore called, 62 per cent of the capital stock of the Tungsten Products Company or 62 per cent of one-half of the capital stock of the Mill City Development Company. And this defendant further denies that any stock in any or either of said corporations, other than the aforesaid five thousand (5000) shares of the capital stock of the Nevada Humboldt Tung-

sten Mines Company, is now, or ever has been rightfully or otherwise, the property of the plaintiff. And this defendant further denies that any action or transaction which would have taken place at said meeting, or any vote had thereat would have been or will be to the great or irreparable damage and injury, or damage or injury, of the plaintiff. That it was and is true that the said defendants who are stockholders in the said Nevada Humboldt Tungsten Mines Company, threaten to and would have voted the stock of said corporation at said meeting as aforesaid unless they had been restrained by the order of this Honorable Court. But in that connection this defendant avers that in obedience to the restraining order issued out of this Honorable Court [1079] in this section, said defendants refrained from doing any of the acts or things forbidden by the said order of this Honorable Court and adjourned said meeting until after the date fixed for the hearing of said order to show cause and have since adjourned the said meeting until after the date fixed for the hearing of the said order to show cause, to wit, until the 14th day of May, 1920, and that they will in obedience to said restraining order, continue to adjourn the said meeting from time to time until the said restraining order is discontinued. This defendant further avers in the same connection that stockholders representing 991,800 shares of the capital stock of said corporation were present in person or by proxy and answered the roll call at said meeting and were then and there anxious, ready and willing, and still are

anxious, ready and willing to further authorize, sanction and approve of the aforesaid transactions and to authorize the execution of any and all further assurance of the title of this defendant that may be proper.

Further answering the allegations of said paragraph thirteen (XIII), this defendant avers that it is just and equitable that the said meeting be held and that the said shares be voted in the manner aforesaid. In that connection, this defendant avers, upon his information and belief, that the transaction between him and the defendant corporations, evidenced by Exhibit 1 hereunto annexed, and the matters and things done pursuant thereto, are in every respect lawful and valid, and that in and by said transaction, deeds and bills of sale he acquired from the said Nevada Humboldt Tungsten Mines Company the title of all of the properties which the said corporation agreed to convey to him in and by the said contract, Exhibit 1. But this defendant is [1080] further advised and believes and therefore alleges that the plaintiff in and by the suit referred to in paragraph thirteen (XIII) of said complaint has called in question the validity of said transaction and of said conveyance upon the sole and technical ground that the said meeting, at which as aforesaid the said transaction with this defendant was authorized by stockholders owning and holding more than 94 per cent of the capital stock of said Nevada Humboldt Tungsten Mines Company was called upon five days' notice instead of upon fifteen days' notice. This defendant fur-

ther avers in the same connection that immediately after the execution thereof, he entered into possession under the contract Exhibit 1 and he and his successors in interest ever since have continued to be and now are in possession of the properties embraced in the said agreement of purchase and sale, Exhibit 1 and have paid out large sums of money in the protection and preservation of said properties and have paid to the defendant corporations, as called for by said contract, to the date hereof, the sum of Two Hundred Fifty-eight Thousand, Three Hundred Thirty-three Dollars and Thirty-three cents (\$258,333.33); and that more than Two Hundred Thousand Dollars (\$200,000) of said money has been used and employed by the defendant corporations in the payment of their debts and obligations. That among the obligations so paid with the said money is a claim of the plaintiff, and that plaintiff, well knowing the source of said money and that the same came from this defendant, has received and accepted from the defendant Nevada Humboldt Tungsten Mines Company, out of the moneys so paid by this defendant the sum of Seven Thousand Three Hundred Thirty-four and 04/100 Dollars (\$7334.04).

That the plaintiff herein and by the said suit [1081] referred to in Paragraph thirteen (XIII) of his complaint calls in question and so casts a cloud upon the title so acquired from the defendant corporations by this defendant, and that if the said vote is had and taken by the said stockholders at the said meeting, said question will be set aside



and said cloud will be removed in accordance with the just rights and equities of this defendant.

This defendant is without knowledge as to the allegations in said Paragraph thirteen (XIII) of plaintiff's complaint which sets forth that the effect of said sale of said property of said Nevada Humboldt Tungsten Mines Co. will be practically to dissolve the same and that unless restrained by order of this Honorable Court, the defendant corporations and their officers and directors will distribute to the stockholders the proceeds from the sale of said mining property and assets to be received from this defendant under the terms of said contract Exhibit 1 (which the plaintiff erroneously avers was executed on the 16th day of August, 1918).

This defendant further avers that he is without knowledge as to whether or not, if such distribution is had, it will be to the great and irreparable damage of the plaintiff. But this defendant denies that it will greatly, or at all, depreciate the value of any stock to which he is entitled under the terms of said contract of April 2d, 1919, Exhibit "C," and this defendant denies that the plaintiff is entitled to any stock under the terms of said contract.

This defendant is without knowledge as to whether the distribution of the proceeds of such sale, if permitted to be made to the stockholders as so threatened, will be a depletion of the capital of said corporation or that the [1082] plaintiff is informed or believes that such distribution would be in viola-

tion of the laws of the State of Nevada or of the rights of the plaintiff as a stockholder in said corporations.

This defendant admits that he will accept a ratification of the aforesaid transaction and such deeds and conveyances or instruments of conveyance as may be made pursuant thereto, if the same shall be had at the said meeting; but this defendant denies that such ratification will cast a cloud upon the title of defendant corporation of, in and to said mine and mining property, or that the said defendant corporations, or either of them, now have or at any time since the 23d day of August, 1919, have had any title whatsoever, in or to said mine, mining claims and mining property. And this defendant further denies that such ratification, deeds and conveyances or instrument of conveyance, or either or any of them, will greatly, or otherwise, depreciate the value of any shares of stock which plaintiff now owns in the defendant corporations, or either of them; and this defendant further denies that plaintiff is entitled to receive, under and by virtue of the terms of said contract, Exhibit "C," any shares of stock whatsoever, of the defendant corporations, or either of them.

This defendant further denies that he will under and by virtue, or under or by virtue, of any instrument or instruments of conveyance that will be authorized and executed at and by the authority of said meeting, so called for April 19, 1920, enter in and upon said mines and mining claims, and work and extract therefrom the valuable minerals therein

contained, or that any entry upon said property or any work performed thereon by or under this defendant will be to the great, or any, damage or injury to the plaintiff [1083] as a stockholder in the said corporation, or that the same would damage or injure or depreciate the value of any stock which the plaintiff is entitled to receive. This defendant further avers in this connection that he and his successors in interest entered into possession of said mining properties and all of them embraced in said contract, Exhibit 1, on or about the 16th day of August, 1919, and ever since have continued to be and now are in possession thereof, with full right to work and extract therefrom the valuable minerals therein contained.

This defendant further denies that at the said meeting the defendant corporations, or any or either of them would permit the defendants named in paragraph thirteen (XIII), or any or either of them, to vote any shares of the capital stock of said corporation, or any or either of them, which are justly or otherwise the property of plaintiff, or that 62 per cent of the shares of the capital stock of any or either of said corporations is justly the property of the plaintiff, or that any vote had or permitted at said meeting will be to the great and irreparable, or great or irreparable, or any, injury or damage of the plaintiff.

#### XIV.

Answering the allegation of paragraph fourteen (XIV) of plaintiff's complaint, this defendant is without knowledge as to the allegations of said

paragraph. But this defendant avers that if in truth and in fact that plaintiff did make the offer therein alleged, that the said offer was not a due offer of performance as called for under the provisions of the contract, Exhibit "C" and was without any validity, force or effect whatsoever.

Further answering the said paragraph fourteen (XIV) [1084] this defendant avers that the alleged offer of the plaintiff if in truth it was ever made, was never accepted by the parties of the second part to the contracts Exhibits "A," "B," and "C," or by the parties of the second part to any or either of said contracts.

XV.

This defendant is without knowledge as to the allegations of paragraph fifteen (XV) of plaintiff's complaint, but in that behalf this defendant avers, upon his information and belief, that the plaintiff did advance certain sums of money to one or more of the defendant corporations, all of which were repaid to the plaintiff prior to August 16, 1919 with the exception of the sum of Seven Thousand Three Hundred Thirty-four and 04/100 Dollars (\$7,334.04) or thereabouts, which was in dispute between the plaintiff and the defendants Nevada Humboldt Tungsten Mines Company and Tungsten Products Company.

That heretofore and on the 16th day of August, 1919, the plaintiff brought an action in this court against both of said defendant corporations to recover the said sum of Seven Thousand Three Hundred Thirty-four and 04/100 Dollars (\$7,334.04),

said action being numbered "Docket 2262" in the records of this court. That thereafter such proceedings were had that the plaintiff received in payment of his claim the sum of Seven Thousand Three Hundred Thirty-four and 04/100 Dollars (\$7,334.04). That the money so received and accepted by said plaintiff in satisfaction of his said claim was a part and portion of the money paid by this defendant to the defendant corporations under and pursuant to the said contract Exhibit 1 as a part of the purchase price of said properties pursuant thereto, and that said amount was received and accepted by the plaintiff with full notice and knowledge of the source of said money [1085] and with full knowledge that the same had been paid by this defendant as a part of the purchase price of said properties pursuant to said contract Exhibit 1.

#### XVI.

Answering the allegations of paragraph sixteen (XVI) this defendant denies that plaintiff has no plain, speedy or adequate remedy at law, and in that behalf this defendant avers that the said plaintiff, if he has any just cause or grievance against the defendants, has a plain, speedy and adequate remedy at law in an action for damages heretofore brought by him in this Honorable Court and now pending therein, numbered on the records of this court, "Docket 2263." That a full, true and correct copy of plaintiff's complaint in said action is hereunto annexed, marked Exhibit 6 and is hereby referred to for further particulars. That the defendants therein have filed an answer in the said



action and that the plaintiff has filed a replication therein, and that the said action is still pending and undetermined.

Further answering the allegations of said paragraph sixteen (XVI) of plaintiff's complaint, this defendant denies that irreparable, or any, damage or injury will result, or would have resulted, to the plaintiff if a temporary restraining order had not been issued without notice in this action.

This defendant further denies that any conveyances ratifying and confirming the contracts and conveyances heretofore executed to this defendant, which the said stockholders would have authorized or which they will hereafter authorize if not restrained and enjoined by this Honorable Court, would have constituted or will constitute a cloud upon the property of Nevada Humboldt Tungsten Mines Company. And this defendant further denies that it would be necessary for any [1086] person or corporation to commence various and sundry proceedings in the courts for the removal of the same, or that any proceedings in the court would be rendered necessary, or that the cost and expense thereof would be impossible of ascertainment, or that it was necessary or proper that a restraining order should have been issued in this action restraining the defendants as requested by the plaintiff, or that the said restraining order heretofore issued herein should be continued in force.

And for further and separate answer and defense, this defendant avers:

## I.

That while it is true that on the 16th day of January, 1919, the plaintiff, Taylor, entered into the contract concerning stock of the Nevada Humboldt Tungsten Mines Company, a copy of which is annexed to plaintiff's complaint marked Exhibit "B" and while it is also true that plaintiff on the 2d day of April, 1919, entered into the contract concerning stock of said corporation, a copy of which is annexed to plaintiff's complaint marked Exhibit "C," nevertheless it is also true that both of said contracts wholly expired by limitation and became null and void on or before the 16th day of June, 1919.

In that behalf this defendant avers:

1. That the said agreement of April 2d, 1919, contains the following provisions among others:

"It is further mutually covenanted and agreed that this agreement shall expire by limitation on June 16, 1919, and shall carry with it the option hereinbefore mentioned as executed on January 16, 1919, which shall also expire by limitation on said date, and they shall be of no further force or effect if the first party shall not have negotiated the loan and secured the money provided for in paragraph one hereof."

"Time is of the essence of this agreement." That the foregoing provisions of said contract, Exhibit "C," were never changed or modified, nor was the time limit therein [1087] provided for ever extended.

2. That in and by said contract Exhibit "C," the said Taylor undertook, among other things, to secure by borrowing on or before June 16th, 1919, for the Nevada Humboldt Tungsten Mines Company and its allied companies a sum sufficient to liquidate the indebtedness of said Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the proportion of the indebtedness of the Mill City Development Company which the parties of the second part to the said agreement then owed, said indebtedness being then estimated to be the sum of Two Hundred Twenty Thousand Dollars (\$220,000).

3. That it was further provided in and by said contract Exhibit "C," that when and if the plaintiff, Taylor, should secure the said sum sufficient to liquidate the entire indebtedness as above provided, then the parties of the second part to said agreement would transfer and deliver to him in full payment for services rendered in securing the aforesaid sum of money sixty-two (62) per cent of the issued capital stock of Nevada Humboldt Tungsten Mines Company, sixty-two (62) per cent of the issued capital stock of the Tungsten Products Company and sixty-two (62) per cent of one-half of the issued capital stock of the Mill City Development Company.

4. That it was further provided in said Exhibit "C" that a deposit of the amount necessary to liquidate the indebtedness as in said contract, Exhibit "C" set forth in the Wells, Fargo Nevada National Bank should be sufficient evidence of the

performance of the conditions called for by said contract to entitle the said Taylor to a transfer and delivery of the aforesaid shares of stock in said respective corporations.

5. That the said plaintiff did not, as provided for in said agreement, Exhibit "C," secure by borrowing or otherwise [1088] for the Nevada Humboldt Tungsten Mines Company and its said allied companies any sum of money whatsoever, and that the said 16th day of June, 1919, came and went without any performance whatsoever by the plaintiff, Taylor, of his aforesaid undertaking to secure the money provided for in said Exhibit "C."

6. That thereafter and on the 9th day of August, 1919, the said David Taylor made oath to a complaint against the parties of the second part to said contract, Exhibit "C," wherein he alleged among other things, that he had been induced to enter into the said contract, Exhibit "C" by reason of the false and fraudulent representations of the parties of the second part to said instrument. And he further alleged on oath in said complaint that during all of the time from April 2d, to June 1st, 1919, he had given his time and efforts to the consummation of said contract, Exhibit "C," and that he had expenses upwards of Eight Thousand Dollars (\$8000) for traveling expenses, assays, maps, surveys, expert services, mining examinations, reports, legal fees, examination of titles, preliminary work, the organization of corporations, and for telegraph and telephone; and that as a result of the said expenditure of time and efforts, he suc-

ceeded and had pledged himself and others associated with him an amount sufficient to meet any and all obligations of his under said contract, Exhibit "C" and sufficient to enable him to receive the shares of stock in the several corporations as herein provided for. But said plaintiff, Taylor, further alleged under oath in said complaint that on the 1st day of June, 1919, he had discovered the falsity of the representations of the defendants, and that thereupon he had communicated the same to his associates who had agreed to furnish a large portion of the money necessary for the completion of the obligations of plaintiff under said contract, and that thereupon his said associates withdrew [1089] from said undertakings and refused to go into the same or advance any money, whatsoever, for it.

7. In the same complaint said plaintiff, Taylor, further made oath that the said Nevada Humboldt Tungsten Mines Company and its said allied companies were each and all insolvent, that their debts and obligations were about One Hundred and Fifty Thousand Dollars (\$150,000), and that the total value of their assets, including all ores developed, did not on the 2d day of April, 1919, or on the said 9th day of August, 1919, exceed the sum of One Hundred Twenty Thousand Dollars (\$120,000). And that said Taylor further made oath therein that had the representations of the defendants been true, the value of the sixty-two (62) per cent of the shares of stock in the respective corporations to which he would have been entitled under the said Exhibit "C" would have been One Hundred Five



Thousand Four Hundred Dollars (\$105,400). And the said Taylor further therein made claim under oath that because of the alleged false and fraudulent representations so alleged by him, he had been damaged in the total sum of One Hundred Fourteen Thousand Five Hundred Seventy-nine and 44/100 Dollars (\$114,579.44); said claim being made up of the aforesaid sum of One Hundred Five Thousand Four Hundred Dollars (\$105,400) and the moneys so alleged to have been expended by him in his efforts to carry out the obligations imposed upon him by the said Exhibit "C."

8. That thereafter the said David Taylor caused said complaint to be filed in this Honorable Court all of which more fully appears from the said complaint in the said action which said action is still pending in this Honorable Court and is numbered "Docket 2263" upon its records, to which complaint reference is hereby made. [1090]

9. That after the said complaint had been filed, this defendant on the 16th day of August, 1919, made and entered into a contract with the Nevada Humboldt Tungsten Mines Company and others, a full, true and correct copy of which is annexed to this defendant's response to the order to show cause and is marked Exhibit 1 and is hereby referred to and made a part hereof.

10. That in and by said contract, Exhibit 1, said Nevada Humboldt Tungsten Mines Company agreed to sell to this defendant, and this defendant agreed to purchase from said corporation, all of its property and assets, with certain exceptions, all of which

more fully appears from the said contract, Exhibit 1.

That this defendant agreed to pay for said property a total of Three Hundred Thirty Three Thousand Three Hundred Thirty-three and 33/100 Dollars (\$333,333.33) in installments as follows:

\$50,000 on or before the 1st day of September, 1919;

\$50,000 on or before the 1st day of October, 1919;

\$50,000 on or before the 15th day of November, 1919;

\$50,000 on or before the 27th day of December, 1919;

\$33,333.33 on or before the 4th day of February, 1920;

\$25,000 on or before the 4th day of May, 1920;

\$25,000 on or before the 4th day of August, 1920;

\$25,000 on or before the 4th day of November, 1920;  
and

\$25,000 on or before the 4th day of February, 1921.

11. That on said 16th day of August, 1919, stockholders owning and holding nine hundred ninety-one thousand eight hundred (991,800) shares of the capital stock upon the books of the Nevada Humboldt Tungsten Mines Company out of a total capitalization of one million (1,000,000) shares, made and executed a written instrument of ratification of said contract, Exhibit 1, a full, true and correct copy of which ratification is hereunto annexed, marked Exhibit 2 and is hereby made a part hereof.  
[1091]

That on the same day the stockholders owning and holding all of the issued capital stock of the Tungsten Products Company made and executed a written ratification of the said contract, Exhibit

1, a full, true and correct copy of which ratification is hereby annexed, marked Exhibit 3 and is hereby made a part hereof.

That also on the same day at a meeting of the stockholders of said Tungsten Products Company, at which meeting all of the stockholders of said corporation were present, a resolution was duly passed and adopted by a vote of the stockholders owning and holding all of the capital stock of said Tungsten Products Company, authorizing, ratifying, confirming and approving the transfer of the properties of said corporation to this defendant in accordance with the terms and provisions of said instrument, hereunto annexed, marked Exhibit 1.

That thereafter a meeting of the stockholders of said Nevada Humboldt Tungsten Mines Company was called to be held on the 23d day of August, 1919. That notice of said meeting and of the purposes and objects thereof was given to each and all of the stockholders of said corporation in the manner provided for in the by-laws of said corporation five days prior to the date on which the said meeting was held. That at said meeting there was present in person or by proxy stockholders representing and owning nine hundred forty one thousand eight hundred (941,800) shares out of a total of one million (1,000,000) shares of the capital stock of said corporation. That although the plaintiff Taylor, did not attend the said meeting in person, he nevertheless knew that the same was to be held at said time and place and caused a communication to be delivered to said meeting.

That at said meeting resolutions authorizing the sale [1092] and transfer provided for in Exhibit 1 were passed and adopted by stockholders owning and holding nine hundred forty one thousand eight hundred (941,800) shares out of the aforesaid total capitalization of one million (1,000,000) shares. Full, true and correct copy of said resolutions are hereunto annexed, marked Exhibit 4 and are hereby referred to and made a part hereof.

12. That thereafter and pursuant to the said resolutions, deeds and bills of sale were duly executed to this defendant in accordance with said contract, Exhibit 1, transferring and conveying to this defendant the property, real and personal, so agreed to be transferred and conveyed to him by the aforesaid agreement, Exhibit 1.

13. That contemporaneously with the execution and delivery of said deeds and bills of sale this defendant executed and delivered to Nevada Humboldt Tungsten Mines Company and Tungsten Products Company a mortgage as called for by the said Exhibit 1. A copy of said mortgage is hereunto annexed marked Exhibit 5 and is hereby referred to and made a part hereof.

14. That pursuant to the terms and provisions of said contract, Exhibit 1, this defendant entered into possession of all of the property, real and personal, which he agreed to purchase under the terms of said contract, Exhibit 1, and he and his successors, ever since on or about the 16th day of August, 1919, have continued to be and now are in possession thereof.

15. That pursuant to the terms of said contract, Exhibit 1, and said mortgage, Exhibit 5 this defendant has already paid, or caused to be paid, to the said Nevada Humboldt Tungsten Mines Company and Tungsten Products Company [1093] the following sums of money at the following times:

\$50,000 on the 1st day of September, 1919;

\$50,000 on the 1st day of October, 1919;

\$50,000 on the 15th day of November, 1919;

\$50,000 on the 27th day of December, 1919;

\$33,333.33 on the 4th day of February, 1920;

\$25,000 on the 4th day of May, 1920;

\$25,000 on the 4th day of August, 1920.

16. That the said sums of money so paid pursuant to said contract, Exhibit 1, and said mortgage, Exhibit 5, aggregating Two Hundred Eighty Three Thousand Three Hundred Thirty-three and 33/100 Dollars (\$283,333.33), have been received by said corporation and that more than Two Hundred Thousand Dollars (\$200,000) of said sums has been actually used by them in the payment of their debts and obligations, and that upwards of One Hundred Thirty-three Thousand Two Hundred Sixty-nine and 99/100 Dollars (\$133,269.99) of said amount has been actually used by said Nevada Humboldt Tungsten Mines Company in the payment of its debts and obligations.

## II.

This defendant further represents to this Honorable Court that in equity and good conscience plaintiff is estopped by his acts and conduct from objecting to the execution of instruments of further



assurance to this defendant or from in any manner questioning the validity of said agreement, Exhibit 1 or the title whereunder this defendant acquired said real and personal property and the possession thereof. In that behalf this defendant avers:

1. That among the debts and obligations paid out of moneys received as aforesaid by Nevada Humboldt Tungsten Mines Company was a claim alleged by the plaintiff, Taylor, to be due and owing from the said corporation to his, amounting to Nine Thousand One Hundred Seventy-nine & 44/100 Dollars [1094] (\$9,179.44). That the said plaintiff, Taylor, received and accepted in full settlement of his said claim the sum of Seven Thousand Three Hundred Thirty-four and 04/100 Dollars (\$7334.04) which amount was paid to him as follows: \$1,000 on the 8th day of January, 1920, and \$6,334.04 on the 13th day of February, 1920. That said Taylor, at the time of receiving said payments, well knew that the source of said money was the said transaction, and that this defendant, Loring, had paid in, and caused to be paid in, the said money to the said corporation on account of the purchase price of said properties as provided for in the agreement of August 16, 1919, (Exhibit 1), and in the mortgage, (Exhibit 5) made in pursuance thereof.

### III.

Further answering the said complaint, this defendant respectfully represents.

That the plaintiff, Taylor, prior to the purchase by this defendant of said properties and prior to the

execution of Exhibit 1 and prior to the payment of any moneys by this defendant on account of the purchase price thereof, had elected to rely upon and pursue a remedy concerning the matters and things now complained of by him, which was wholly inconsistent with the remedy which he seeks in this action and which in equity and good conscience prevents him from seeking the relief prayed for in this action. In that behalf this defendant avers:

1. That on or about the 10th day of August, 1919 and after the period fixed in the contract, plaintiff's Exhibit "C" for the expiration of said contract by limitation, and before this defendant entered into the contract, Exhibit 1, plaintiff, Taylor, with full knowledge of all of the matters now relied upon and alleged by him in his complaint in his present action having taken place prior to the said 10th [1095] day of August, 1919, declared and represented to this defendant, W. J. Loring, that he, said Taylor, had a case either for compelling the present stockholders of the Nevada Humboldt Tungsten Mines Company to assign to him control of the stock of said corporation, or as an alternative remedy, an action for heavy damages against the said stockholders.

2. That thereafter on the 16th day of August, 1919, the said plaintiff elected to and did pursue the aforesaid alternative remedy of seeking heavy damages against the parties of the second part to the said contract, Exhibit "C," by filing in this Honorable Court the aforesaid complaint against the said parties of the second part to said contract,

plaintiff's Exhibit "C," wherein and whereby he set forth the identical matters and things set forth in paragraphs four (IV) to seven (VII) inclusive, of his complaint herein, the substance of which allegations is that the defendants had agreed to convey to him sixty-two (62) per cent of the stock of said Nevada Humboldt Tungsten Mines Company and other stock in consideration of the performance of certain services to be rendered by him, and that he had proceeded to render the agreed services; but that while rendering said services he had discovered that the defendants in said action had falsely and fraudulently represented the value of said property; and that he and his associates had thereupon declined to furnish the money called for by plaintiff's Exhibit "C"; that the Nevada Humboldt Tungsten Mines Company was and is insolvent and its stock valueless; and in lieu of said stock he asked damages to the amount of One Hundred Five Thousand Dollars (\$105,000) which sum he alleged would have represented the value of sixty-two (62) per cent of stock according to his estimate of the value thereof, if the alleged representations made to him had been true.

That the fact that plaintiff had made said election [1096] was known to this defendant prior to the payment by this defendant of any part of the purchase price of said properties.

3. This defendant further alleges that the said act of the plaintiff, Taylor, in filing the said complaint was done with full knowledge of his, said Taylor's rights and of all of the facts, and that his

election to insist upon the said remedy of damages involved a negation and repudiation of the remedy which he seeks in this action.

4. This defendant, W. J. Loring, further avers that the meeting of the stockholders of said Nevada Humboldt Tungsten Mines Company called for April 27th, 1920, in deference to the restraining order of this Court was adjourned to meet again on the 14th day of May, 1920, and has been and is being duly continued from time to time to await the action of this Honorable Court. That it is just and equitable that the said meeting of stockholders should proceed to act favorably upon the matters and things for which it has been called and to authorize and direct the execution of additional deeds or bills of sale by way of further assurance of the title of this defendant. And in that behalf this defendant avers that the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company were on the 16th day of August, 1919, indebted in a sum in excess of Two Hundred Thousand Dollars (\$200,000) and that they were unable to meet their obligations and that on the said day the plaintiff, Taylor, had made oath and had represented to this Court that the said Nevada Humboldt Tungsten Mines Company was insolvent and in substance had stated on oath that its stock was without any value whatever. That under the said conditions the Board of Directors of said corporation duly authorized and caused said corporation to enter into a contract for the transfer of certain of its properties, real and personal, to this defendant [1097]

Loring, as more fully appears by said contract, Exhibit 1. That although the sale and transfer, so authorized to be made to this defendant, embraced by far the greater portion of the property and assets of said corporation, nevertheless it is the fact that it did not embrace all of the property, but excepted and excluded from said transaction property belonging to the Nevada Humboldt Tungsten Mines Company of the value of several hundred dollars.

5. That the said sale to this defendant was absolutely necessary in order to pay the debts and obligations of said corporation and to save the said Nevada Humboldt Tungsten Mines Company from bankruptcy and financial ruin. That the price agreed upon was at least the full value of said properties embraced therein and was a sum which was more than One Hundred Seventy Five Thousand Dollars (\$175,000) in excess of the amount which the plaintiff, Taylor, stated on oath on said day was the value of said properties.

6. That, as this defendant is advised and believes and therefore avers that the circumstances under which the said sale and transfer to this defendant was made were such that the said sale did not require any ratification by the stockholders of Nevada Humboldt Tungsten Mines Company, and that said transaction is wholly unaffected by Section 96 of the General Corporation Laws of Nevada of 1903 as amended in 1913, referred to in plaintiff's complaint, wherein it is provided that a corporation may sell and dispose of all of its



property and assets when authorized by sixty (60) per cent of its stockholders at a meeting called upon fifteen days' notice. That nevertheless the said transaction was assented to, ratified and approved in the manner hereinabove set forth by stockholders of said corporation representing nine hundred forty-one thousand eight [1098] hundred (941,800) shares out of a total of one million (1,000,000) shares of capital stock of said corporation. And this defendant avers that stockholders of said corporation owning and holding more than ninety-nine (99) per cent of all of the shares of capital stock of said corporation are ready, anxious and willing now at the said adjourned meeting (which has been called upon fifteen days' notice) to further authorize, sanction, ratify and approve the said transaction with this defendant and to authorize and direct the execution and delivery of such further deeds and bills of sale as may be proper by way of further assurance.

7. That, as this defendant is advised, it is not necessary or essential to the title of this defendant or his successors that such meeting be held or such authorization or ratification had; but nevertheless this defendant avers that it is proper and desirable that the said meeting be held and that the execution of further assurances to this defendant or his successors be at such meeting authorized and sanctioned, forasmuch as it is the fact that the said David Taylor, who holds five thousand (5,000) shares upon the books of the Nevada Hum-

boldt Tungsten Mines Company has questioned and is questioning the validity of the bill of sale and deeds received by this defendant from the said Nevada Humboldt Tungsten Mines Company upon the technical ground that the said transaction was not authorized at a meeting held upon fifteen days' notice and said contention tends to cloud the title to said land and to injure this defendant and his successors.

#### IV.

This defendant further alleges:

1. That the plaintiff, Taylor, has been guilty of gross laches in the matter of filing his complaint in this [1099] action. And in that behalf this defendant avers that well knowing that on the 16th day of August, 1919, the said Nevada Humboldt Tungsten Mines Company entered into said contract with this defendant, marked Exhibit 1, and well knowing that the said contract and the mortgage given pursuant thereto called for payments of money at stated times under penalty of forfeiture by this defendant, and well knowing that the outstanding liabilities and obligations of said Nevada Humboldt Tungsten Mines Company were such that the moneys called for by said contract to the extent of at least Two Hundred Thousand Dollars (\$200,000) would be required and would be immediately used when and as paid in by said defendant in discharge of obligations of said corporation and of said Tungsten Products Company, its subsidiary corporation, nevertheless

said plaintiff wilfully and deliberately stood by and wilfully failed and neglected and refrained from beginning said suit until a total sum of Two Hundred Thirty Three Thousand Three Hundred Thirty Three and 33/100 Dollars (\$233,333.33) had been paid under the said contract and until he well knew that debts exceeding Two Hundred Thousand Dollars (\$200,000) of said Nevada Humboldt Tungsten Mines Company and its said subsidiary corporation, Tungsten Products Company, had been paid out of moneys so paid in by said defendant.

2. That in equity and good conscience plaintiff is estopped and debarred by his laches and conduct aforesaid from maintaining this action or from obtaining any relief thereunder, and particularly, from obtaining any injunction under the order to show cause herein which will prevent said Nevada Humboldt Tungsten Mines Company from giving to this defendant further assurance of the title to the real and personal property pursuant to the said agreement, Exhibit 1. [1100]

V.

This defendant avers that said bill is wholly without equity, and moves that the same be dismissed for want of equity.

WHEREFORE, this defendant prays that the plaintiff take nothing by his action; that the said complaint be dismissed for want of equity, and that this defendant have and recover of and from the plaintiff his costs of suit herein together with

such further or different relief as is meet in the premises and conformable to equity.

JOHN F. DAVIS and

CHARLES S. WHEELER, and

CHARLES S. WHEELER, Jr.,

Solicitors for Defendant, W. J. Loring. [1101]

State of California,

City and County of San Francisco,—ss.

W. J. Loring, being first duly sworn deposes and says: That he is one of the defendants in the above-entitled action; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and that as to those matters, he believes it to be true.

W. J. LORING.

Subscribed and sworn to before me this 4th day of September, 1920.

W. W. HEALEY,

Notary Public in and for the City and County of San Francisco, State of California. [1102]

**Exhibit No. 2.**

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, being the owners of more than ninety-five per cent (95%) of the total authorized capital stock of the Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the

State of Nevada, do hereby approve and ratify the foregoing and attached contract made and entered into by said Nevada Humboldt Tungsten Mines Company on the one part and W. J. Loring on the other part; and we do hereby ratify, approve and confirm the acts of the President and Secretary of the above corporation in executing the said contract on behalf of said Nevada Humboldt Tungsten Mines Company.

IN WITNESS WHEREOF, we have hereunto set our hands this sixteenth day of August, A. D. 1919.

L. A. Friedman	owning	91,640 shares
Lena J. Friedman	owning	250,000 shares
R. Nenzel	owning	102,000 shares
G. K. Hinch	owning	10,000 shares
H. J. Murrish	owning	101,000 shares
C. H. Jones	owning	100,000 shares
John G. Huntington	owning	50,000 shares

By R. Nenzel, Atty. in fact.

Frank Carlstrom	owning	60,000 shares
C. W. Poole	owning	219,160 shares
V. A. Twigg	owning	3,000 shares
J. T. Goodin	owning	5,000 shares

I, R. Nenzel, Secretary of Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby certify that the persons whose names are signed to the attached ratification of stockholders [1103] of the Nevada Humboldt Tungsten Mines Company are the owners of more



than ninety-five (95%) per cent of the total authorized capital stock of said corporation standing in their names on the books of said corporation on this date and are each the owners of the number of shares set opposite their respective names.

IN WITNESS WHEREOF I have hereunto set my hand as Secretary of said Nevada Humboldt Tungsten Mines Company this 16th day of August, 1919, and affixed hereto the corporate seal of said corporation.

[Corporate Seal]      R. NENZEL, [1104]  
Secretary of Nevada Humboldt Tungsten Mines  
Company, a Nevada Corporation.

### **Exhibit No. 3.**

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, being the owners of more than ninety-five per cent (95%) of the total authorized capital stock of the Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby approve and ratify the foregoing and attached contract made and entered into by said Tungsten Products Company on the one part and W. J. Loring on the other part; and we do hereby ratify, approve and confirm the acts of the President and Secretary of the above corporation in executing the said contract on behalf of said Tungsten Products Company.

IN WITNESS WHEREOF, we have hereunto set our hands this, the sixteenth day of August, A. D., 1919.

L. A. Friedman	owning	1,000 shares
L. A. Friedman, Trustee,	owning	94,680 shares
H. J. Murrish	owning	1,000 shares
R. Nenzel	owning	1,000 shares
C. H. Jones	owning	1,000 shares
John G. Huntington	owning	1,000 shares

R. Nenzel, Atty. in fact.

I, R. Nenzel, Secretary of the Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby certify that the persons whose names are signed to the attached ratification of stockholders of Tungsten Products Company are the owners of more than ninety-five (95%) per cent of the total authorized capital stock of said corporation standing in their names on the books of said corporation on this date and are each the owners of the number of shares set opposite their respective names.

IN WITNESS WHEREOF I have hereunto set my hand as Secretary of said Tungsten Products Company this 16th day of August, 1919, and affixed hereto the corporate seal of said corporation.

[Corporate Seal] R. NENZEL,  
Secretary of Tungsten Products Company, a  
Nevada Corporation. [1105]

**Exhibit No. 4.**

(Resolution of Stockholders of Nevada Humboldt Tungsten Mines Company, passed and adopted at Special Meeting of Stockholders held on August 23d, 1919.)

WHEREAS, the President and Secretary of this Company did, on the 16th day of August, 1919, execute on behalf of this corporation, a certain contract and agreement made between this Company and Tungsten Products Company, on the one part, and W. J. Loring of the City and County of San Francisco, State of California on the other part, which contract provided for the sale of this Company's property to said W. J. Loring, jointly with the property of the Tungsten Products Company, for a consideration of \$333,333.33 be, and the same is hereby ratified, confirmed and approved, and the acts of said officers are hereby adopted as the acts of this corporation as fully to all intents and purposes as if the said officers had been previously authorized to enter into and execute said contract and agreement on behalf of this Company by a Resolution of its stockholders duly adopted.

FURTHER RESOLVED, that the action of the Board of Directors of this corporation authorizing and directing the said officers to execute said contract on behalf of this corporation be, and the same is hereby ratified and approved and the act of said Board of Directors in this behalf is hereby

adopted as the act of the stockholders of this Company. [1106]

Resolution of Stockholders of Nevada Humboldt Tungsten Mines Company Continued.

WHEREAS, W. J. Loring has made an offer to this Company, jointly with the Tungsten Products Company to purchase the real and personal property of this corporation and the real and personal property of said Tungsten Products Company for the sum of \$333,333.33, and

WHEREAS, the Board of Directors of this Company, have, by Resolution, recommended that this Company, accept the said offer and sell to W. J. Loring the real and personal property of this Company upon the terms stated in the contract here exhibited and fully set forth in the Minutes of the special meeting of the Board of Directors of this Company, held on the 16th day of August, 1919, and

WHEREAS, this Company and said Tungsten Products Company, which is a subsidiary corporation to this Company, has become heavily indebted to various creditors and have not sufficient funds to meet the demands of said creditors, and it appears to us to be for the best interest of this Company, and its creditors, to accept the offer of said Loring, and to sell said property to him, and

WHEREAS, it appears upon inspection of the sale contract executed by officers of this Company and said W. J. Loring that more than ninety per cent of the outstanding capital stock of this corporation has already, in writing, ratified and ap-

proved the said contract and the proposed sale of this Company's property, and

WHEREAS, we, the stockholders, deem that the offer of \$333,333.33 made for the property, in view of the indebtedness of the Company and threatened law suits and other matters which tend to harass the Company and make a sale of its property at a higher figure impossible, is a reasonable one.

[1107]

RESOLVED, that the President and Secretary of this Company be, and they are hereby directed, authorized and empowered to make, execute and deliver to said W. J. Loring, good and sufficient Deeds and Bills of Sale to all of the properties of this Company described in said contract and any and all other rights, assignments and conveyances which may be necessary to properly convey the property of this corporation described in said contract to said Loring, under the terms of and as provided in said contract.

FURTHER RESOLVED, that the Board of Directors of this corporation be, and they are hereby ordered and directed to cause the said contract with said W. J. Loring to be fully carried out and performed on the part of this corporation. [1108]

(Resolution of Stockholders of Nevada Humboldt Tungsten Mines Company—Continued)

RESOLVED, that the action of L. A. Friedman, as Trustee for the stockholders of this corporation in voting 94,680 shares of the capital stock of the Tungsten Products Company in favor of the sale of the property of said Tungsten Products Com-



pany to W. J. Loring at a meeting of the stockholders of said Tungsten Products Company, held August 16th, 1919, be, and the same is hereby ratified, approved and confirmed and,

FURTHER RESOLVED, that the stockholders of this corporation do hereby adopt the said act of said L. A. Friedman, Trustee, as their own act and deed. [1109]

EXHIBIT "4" (CONTINUED).

(Resolution of Stockholders of Tungsten Products Company, passed and adopted at Special Meeting held on the 16th day of August, 1919.)

WHEREAS, the President and Secretary of this Company did on the 16th day of August, 1919, execute on behalf of this corporation a certain contract and agreement made between this Company and Nevada Humboldt Tungsten Mines Company, on the one part, and W. J. Loring of the City and County of San Francisco, State of California, on the other part, which contract provided for the sale of this company's property to said W. J. Loring, jointly with the property of the Nevada Humboldt Tungsten Mines Company, for a consideration of \$333,333.33 be, and the same is hereby ratified, confirmed and approved, and the acts of said officers are hereby adopted as the acts of this corporation as fully to all intents and purposes as if the said officers had been previously authorized to enter into and execute said contract and agreement on behalf of this Company by a Resolution of its stockholders adopted.

FURTHER RESOLVED, that the action of the Board of Directors of this corporation authorizing and directing the said officers to execute said contract on behalf of this corporation be, and the same is hereby ratified and approved and the act of said Board of Directors in this behalf is hereby adopted as the act of the stockholders of this Company. [1110]

(Resolution of Stockholders of Tungsten Products Company—Continued)

WHEREAS, W. J. Loring has made an offer to this Company, jointly with the Nevada Humboldt Tungsten Mines Company to purchase the real and personal property of this corporation and the real and personal property of said Nevada Humboldt Tungsten Mines Company for the sum of \$333,333.33 and,

WHEREAS, the Board of Directors of this Company have, by Resolution, recommended that this Company accept the said offer and sell to W. J. Loring the real and personal property of this Company upon the terms stated in the contract here exhibited and fully set forth in the Minutes of the special meeting of the Board of Directors of this Company, held on the 16th day of August, 1919, and

WHEREAS, this Company and said Nevada Humboldt Tungsten Mines Company, has become heavily indebted to various creditors and have not sufficient funds to meet the demands of said creditors, and it appears to us to be for the best interests of this Company, and its creditors, to accept the

offer of said Loring and to sell said property to him, and

WHEREAS, it appears upon inspection of the sale contract executed by officers of this Company and said W. J. Loring that more than ninety per cent of the outstanding capital stock of this corporation has already in writing ratified and approved the said contract and the proposed sale of this Company's property, and,

WHEREAS, we, the stockholders, deem that the offer of \$333,333.33 made for the property, in view of the indebtedness of the company and threatened law suits and other matters which tend to harass the Company and make a sale of its property at a higher figure impossible, is a reasonable one. [1111]

RESOLVED, that the President and Secretary of this Company be, and they are hereby directed, authorized and empowered to make, execute and deliver to said W. J. Loring good and sufficient deeds and Bills of Sale to all the properties of this Company described in said contract and any and all other rights, assignments and conveyances which may be necessary to properly convey the property of this corporation described in said contract to said Loring, under the terms of and as provided in said contract.

FURTHER RESOLVED, that the Board of Directors of this corporation be, and they are hereby ordered and directed to cause the said contract with said W. J. Loring to be fully carried out and performed on the part of this corporation. [1112]

**Exhibit No. 5.**

**MORTGAGE TO SECURE PURCHASE PRICE.**

THIS INDENTURE, made and entered into the 23d day of August, in the year of our Lord One Thousand Nine Hundred and Nineteen, by and between W. J. Loring, of the City and County of San Francisco, State of California, the party of the first part, and Nevada Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the state of Nevada, the parties of the second part,

**WITNESSETH:**

WHEREAS, the party of the first part has this day bought from the parties of the second part, and the parties of the second part have this day sold to the party of the first part, and to his heirs and assigns forever, all of the property hereinafter described, together with other property, for the sum of Three Hundred and Thirty-three Thousand Three Hundred and 33/100 Dollars (\$333,333.33), in lawful money of the United States, which said sum of money said party of the first part has obligated himself to pay to the parties of the second part in accordance with the provisions of that certain contract in writing, dated the 16th day of August, 1919, between the parties of the second part herein as parties of the first part therein, and the party of the first part herein as party of the second part therein, in in-

stallments, at the times, and in the manner, and in accordance with the provisions of said contract in writing of August 16th, 1919.

NOW, THEREFORE, in consideration of the premises, and in consideration of the sum of One Dollar in hand paid to the party of the first part herein by the parties of the second part herein, the receipt whereof by the party of the [1113] first part therein from the parties of the second part herein is hereby acknowledged, and for other good and valuable considerations him hereunto moving, the party of the first part herein does by these presents grant, bargain, sell and convey unto the parties of the second part herein, and to their successors and assigns forever, all those certain pieces or parcels of land situated in the County of Pershing, formerly the County of Humboldt, of Nevada, more particularly described as follows:

The Gross Mine No. 2, Gross Mine No. 3, White Rock Mine, and Sky High, lode mining claims, situated about seven miles northwest of Mill City station, on the Southern Pacific Railroad, copies of the location notices of which were duly recorded in the office of the County Recorder of said Humboldt County, in Book "S" of Notices, at page 502, reference to which said records for purposes of greater certainty of description is hereby expressly made, being the same property described in that certain Deed thereof to Nevada Humboldt Tungsten Mines Company, a Nevada Corporation, dated February 17, 1917, and recorded in Book 53



of Deeds, page 146, records of the County Recorder of said Humboldt County, State of Nevada;

Together with all the dips, spurs and angles, leads, lodes, metals, ores, gold, silver and tungsten bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed;

Also, that certain lot, piece or parcel of land situated in the County of Pershing, (formerly the County of Humboldt) State of Nevada, and described as follows, to wit:

Beginning at the East quarter corner of Section Twenty Seven (27) Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence South, along the East line of said Section, to the Southwest corner thereof; thence West, along the South line of said Section, to the South quarter corner thereof; thence northwesterly, in a straight line, to the place of beginning, containing eighty (80) acres, according to the United States Public Surveys, together with all the rights, privileges and appurtenances thereunto belonging or in anywise appertaining, Being the same ground deeded to the Nevada Humboldt Tungsten Mines Company, a Nevada Corporation, in that certain deed, dated April 25, 1918, recorded in Book 53, page 76, of Deeds, records of the office of the County Recorder of said County of Humboldt, State of Nevada;

Also that certain piece or parcel of land lying, situate and being in the county of Pershing (for-

merly County of Humboldt), State of Nevada, more particularly described as follows:

Beginning at the Southwest corner of Section Twenty-seven (27), Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence North one Hundred feet; thence east five hundred (500) feet; thence south six hundred (600) feet; thence west six hundred (600) feet; thence north five (500) hundred feet; thence east [1114] one hundred (100) feet, to the place of beginning, being the same property described in that certain Deed thereof to Tungsten Products Company, a Nevada corporation, described in Book 1 of Deeds, page 18, official records in the office of the County Recorder of Pershing County, State of Nevada, to which said record reference is hereby expressly made; together with the mill, plant, improvements, tenements, and hereditaments thereon, and all the rights, privileges, easements and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed;

Also, that certain easement for the flow of tailings from the mill, or any other plant or structure, on, or that may be constructed on, said last above described tract flowing on or over the northeast quarter of Section Thirty-five (35) Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; together with all the rights, privileges and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed. Being the same easement described in that certain Deed thereof

recorded in Book 1 of Deeds, page 20, official records in the office of the County Recorder of the County of Pershing, State of Nevada, to which said record reference is hereby expressly made;

Together with all the mills, buildings, improvements and equipment erected upon or in any of the land hereinbefore described; and including all property thereon or therein which constitutes real property under the provisions of the laws of the State of Nevada in such case made and provided.

This conveyance is intended as a mortgage, to secure the payment of Three Hundred Thirty-three Thousand, Three Hundred and Thirty-three and 33/100 (\$333,333.33) Dollars, in lawful money of the United States, as the purchase price of said and other property, upon the following installments and at the following times, to wit:

\$50,000 thereof on or before the 1st day of  
September, 1919.

\$50,000 thereof on or before the 1st day of  
October, 1919.

\$50,000 thereof on or before the 15th day of No-  
vember, 1919.

\$50,000 thereof on or before the 28th day of  
December, 1919.

\$33,333.33 thereof on or before the 4th day of  
February, 1920.

\$25,000.00 thereof on or before the 4th day  
of May, 1920.

\$25,000.00 thereof on or before the 4th day  
of August, 1920.

\$25,000.00 thereof on or before the 4th day of November, 1920, and

\$25,000.00 thereof on or before the 4th day of February, 1921.

All of said payments of installments of said purchase price to be made in cash, or by certified check, or by Cashier's check, or bank telegraph transfer, to the credit of the parties of the first part, at the First National Bank of Lovelock, Nevada, by payment thereof to its Cashier, J. T. Goodin, who is trustee for certain creditors of said parties of the second part herein, who shall, first, pay off the loan of \$10,000 procured by him to pay off labor claims, and shall thereafter pay out said installments so received to the respective creditors [1115] represented by him in accordance with his trust, but the payment thereof by said party of the first part herein to said Cashier and Trustee, or to his successors as such, shall be a complete performance by said party of the first part herein of the payment of each installment so paid, and said party of the first part herein shall not be obligated to ascertain whether said payments of said Cashier or Trustee have been properly distributed; according to the conditions of that certain written contract dated the 16th day of August, 1919, above mentioned, and these presents shall be void, if such payments be made according to the tenor and effect thereof.

It is hereby understood and agreed, that the party of the first part shall, while this mortgage continues in force and effect and until the debt secured

thereby shall be discharged, cause to be performed upon each of the unpatented mining claims in the property above described, the annual assessment work necessary to protect the same under the provisions of the Statutes of the United States and of the State of Nevada in such case made and provided;

IT IS FURTHER UNDERSTOOD AND AGREED, that the party of the first part herein shall have the right to conduct and operate said property, during the existence of this mortgage and until the debt secured thereby shall have been extinguished, to extract, ship, reduce and sell ore and concentrates therefrom, and shall apply the net proceeds of any concentrates derived from said operations, by him first to the payment of the debt of the parties of the second part herein as set forth in said written contract of August 16, 1919, obtaining credit therefor upon the installment of the purchase price in the manner therein set forth, and thereafter shall have the right to apply such net proceeds upon said installment of the purchase price as will then remain, and shall have the right of necessary repair, renewal and replacement of machinery, tools and equipment while so doing with machinery, tools and equipment of equal [1116] make and value, but all work and operations conducted by him upon or in said property or any part thereof shall be performed and done in a good and miner-like manner; and neither said parties of the second part, nor said property, nor any of them, shall be liable for the cost or expense of



operating or conducting mining, milling, or reduction works on or in said property, or for labor employed thereon or therein or material furnished thereon or therein, at the instance or request of said party of the first part herein or of his heirs, administrators, or assigns, but said party of the first part herein, his heirs, administrators and assigns shall be responsible for such costs and expenses;

IT IS FURTHER UNDERSTOOD AND AGREED, that said party of the first part herein will cause to be recorded in the proper recording office and posted in the proper places upon said property and notices requested by the parties of the second part herein, that may be necessary to protect said property from liens under the provisions of the Statute in such case made and provided;

IT IS FURTHER UNDERSTOOD AND AGREED, that said party of the first part herein will pay or cause to be paid, all taxes that may be levied upon said property by national, state, county or district authority, during the continuance of this mortgage, and until the debt secured thereby shall have been extinguished;

IT IS FURTHER UNDERSTOOD AND AGREED, that said party of the first part herein shall cause the buildings upon said property to be insured against fire in reputable fire insurance companies authorized and doing business under the provisions of the laws of the United States and of the State of Nevada, and having the right to

operate in said State of Nevada, in a sum of not less than \$82,950.00, and shall apportion said amount of insurance upon said property, as follows: mill buildings, not less than \$35,000; mill machinery, not less than \$40,000; superintendent's residence, [1117] not less than \$1,000; boarding-house and fittings, not less than \$800; twelve cottages now upon said property, not less than \$1,800; compressor's building, not less than \$400; compressor machinery, not less than \$1,500; gallows-frame on S. P. ground, not less than \$300; hoist-building at S. P. shaft, not less than \$100; hoist engine at S. P. Shaft, not less than \$500; gallows-frame, Carlson, not less than \$500; blacksmith's shop, not less than \$300; office and warehouse not less than \$750.

It is understood and agreed, that, in case said party of the first part herein should fail or neglect to pay any of said taxes when due, or fail or neglect to cause to be performed any of said annual assessment work required by the provisions of the Statutes of the United States or the State of Nevada, when necessary, the parties of the second part herein, or either of them, shall have the right, at their option, to pay said taxes, or fire insurance premiums upon the above insurance, or to cause said assessment work to be performed and to advance the money necessary therefor, and these presents shall constitute a security to them for the repayment of any such advances, as well as for the payments of the installments of the purchase price of said property hereinbefore set forth.

IT IS UNDERSTOOD AND AGREED, that if any installment of the purchase price hereinbefore set forth shall not be punctually paid when the same shall become due and payable, and for five days thereafter, as in said written contract of August 16th, 1919, and in this mortgage mentioned, then and in such case the whole of the balance of said purchase price then remaining unpaid shall be taken to be wholly due and payable, at the option of said parties of the second part herein, or of either of them, and proceedings may forthwith be had by said parties of the second part, their successors and assigns, for the recovery of the same, either by suit on said contract of August 16th, 1919, or on this mortgage, anything in said contract or in this [1118] indenture contained to the contrary thereof notwithstanding. And in any suit or other proceedings that may be had for the recovery of said balance of said purchase price, on either said contract or this mortgage, it shall and may be lawful for said parties of the second part herein, their successors or assigns, to include in the judgment that may be recovered, such reasonable counsel fees and charges of attorneys and counsel employed in such foreclosure suit as shall be fixed by the Court having jurisdiction of such foreclosure suit, as well as all payments that the parties of the second part herein, or either of them, or their successors or assigns, may make for their security, or for the security of either of them, on account of taxes or moneys expended for the payment of fire insur-

ance premiums, or for annual assessment work upon said premises, as hereinbefore mentioned.

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal, the day and year herein first above written.

W. J. LORING.

Duly acknowledged before Booth B. Goodman,  
Notary Public, Aug. 23, 1919. [1119]

**Exhibit No. 6.**

In the United States District Court, in and for the  
District of Nevada.

AT LAW.

DAVID TAYLOR,

Plaintiff,

vs.

C. W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, G. K.  
HINCH, J. T. GOODIN, V. A. TWIGG,  
J. C. HUNTINGTON, and LENA J.  
FRIEDMAN,

Defendants.

**BILL OF COMPLAINT.**

Comes now the plaintiff in the above-entitled action and complains of the defendants, and for cause of action alleges:

**I.**

That plaintiff is a citizen and resident of the

State of Colorado and of the City and County of Denver in said state.

## II.

That the defendants, and each of them, are citizens and residents of the State of Nevada and of Lovelock, Pershing County in said state.

## III.

That this is a controversy between citizens and residents of different states, and the amount in controversy, herein, exclusive of interest and costs, exceeds the sum of Three Thousand (\$3,000.00) Dollars.

## IV.

That on or about the 16th day of January, 1919, the defendants executed, made and entered into a contract with the plaintiff for the sale of all of their respective interests in the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, said interests of the respective parties being represented by certain shares of stock in said companies; said Nevada Humboldt Tungsten [1120] Mines Company being then and there the owner of certain mines and mining claims and mining rights in certain real estate, all situated near Mill City in what is now the County of Pershing in the State of Nevada; that the Tungsten Products Company was a subsidiary of said Nevada Humboldt Tungsten Mines Company and owned and operated a mill for the treatment and concentration of certain scheelite ores produced by the Nevada Humboldt Tungsten Mines Company at its property afore-



said, and that the Mill City Development Company was a corporation owning certain real estate, also a pipe-line and water rights, and about fifty (50%) per cent of the capital stock of said corporation being then and there owned by the Nevada Humboldt Tungsten Mines Company or the Tungsten Products Company hereinbefore mentioned. That a copy of said contract for the sale of said respective interests of the defendants is attached to this Complaint, made a part hereof and marked Exhibit "A."

V.

That sometime immediately preceding the making and execution of the contract of January 16th, Exhibit "A," there had been brought to the attention of the plaintiff a report of one Howland Bancroft, a mining engineer of and concerning the mines, mining property and mining rights of the Nevada Humboldt Tungsten Mines Company, which said report showed the amount of development which then existed upon said mining property, and showed that about nine thousand (9,000) tons of scheelite ore of an average of 1.75% tungstic acid had been developed, placed in sight, blocked out and ready for mining in said mining property of the Nevada Humboldt Tungsten Mines Company; that at all of the times mentioned in this Complaint the defendants, Murrish, Nenzel and Poole were directors of the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company, and the defendant Poole had general charge of all mining and milling operations of [1121] said

Nevada Humboldt Tungsten Mines Company and its subsidiary, the Tungsten Products Company; that the facts and truth concerning said mines and mining claims of the Nevada Humboldt Tungsten Mines Company and of the development work which had been performed and the new development work in process on and within said mines, mining claims and mining rights of said Nevada Humboldt Tungsten Mines Company, and the amount of ore developed, placed in sight, blocked out and ready for mining in said mining property of the Nevada Humboldt Tungsten Mines Company were at all times mentioned in this Complaint peculiarly within the knowledge and information of the defendants, and particularly of the defendants, Poole, Nenzel, Murrish and Friedman. That in or about the month of March, 1919, plaintiff informed the defendants that he would not exercise his option to purchase said interests of the defendants in said corporations under said contract of January 16th; that thereupon the defendants, Poole, Murrish, Nenzel and Friedman, acting for themselves and for the other defendants, falsely and fraudulently, by means of letters and telegrams, informed the plaintiff that further and new development work had been carried on within the mines, mining claims and mining rights, and property of the Nevada Humboldt Tungsten Mines Company which had developed and placed in sight, blocked out and ready for mining large quantities of scheelite ore of commercial value and capable of being concentrated, and the concentrates so returned being of

great value; that thereupon, and on or about the 2d day of April, 1919, the defendants Poole, Murrish and Nenzel came to Denver, Colorado, for the purpose of inducing the plaintiff to take a new contract for the disposition of their respective interests, or a part thereof, and the plaintiff, relying upon said representations of the defendants Poole, Murrish, and Nenzel, who then and there represented themselves, and were acting, as the representatives, agents and attorneys in fact for the other defendants, [1122] entered into a contract whereby plaintiff undertook to raise sufficient money to pay the debts and obligations of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, for which said service the plaintiff was to receive sixty-two (62%) per cent of the issued capital stock of the Nevada Humboldt Tungsten Mines Company, sixty-two per cent (62%) of the issued capital stock of the Tungsten Products Company and sixty-two (62%) per cent of one-half of the issued capital stock of the Mill City Development Company, a full, true and correct copy of said contract being attached to this complaint, made a part hereof, and marked Exhibit "B,"—said contract was executed at Denver, Colorado; that the defendants Poole, Murrish and Nenzel, acting for themselves and as the agents of and for the other defendants, for the purpose of inducing the plaintiff to enter in and upon said supplemental contract, Exhibit "B," of date of April 2, 1919, then and there falsely and fraudu-

lently, and with intent to deceive the plaintiff, represented to plaintiff that when the contract of January 16, 1919, was entered into, Exhibit "A," there was blocked out, developed and in sight in said mine about nine thousand (9000) tons of scheelite ore carrying 1.75% tungstic acid; and that since said date great and additional ore bodies of equal grade had been developed; that a large amount of new development work had been done and performed upon said mines and that there was then on said 2d day of April, blocked out, in sight and ready for mining and reduction into concentrates over sixty thousand (60,000) tons of scheelite ore which would carry from 1.50% tungstic acid or 1.75% tungstic acid; that each and all of said representations were false and untrue and were known by the defendants at the time they were made to be false and untrue, and were made for the purpose of deceiving the plaintiff and for the purpose of causing him [1123] to undertake and carry out the provisions of said supplemental contract of April 2, Exhibit "B," attached hereto; that in truth and in fact at said time there was opened up and developed and in sight in said mine not to exceed nineteen thousand (19,000) tons *to* scheelite ore of an average value not to exceed 1.75% tungstic acid.

## VI.

That plaintiff, relying upon and believing said false and fraudulent representations of the defendants, so made on or about the 2d day of April, 1919, immediately gave practically his sole time and at-

tention to the carrying out of the terms of said contract by which he was to raise for the benefit of the corporations, Nevada Humboldt Tungsten Mines Company, Tungsten Products Company and Mill City Development Company, sufficient moneys for the payment of their debts and outstanding obligations, and in so doing and in his endeavor to carry out said provisions of said contract, and for the purpose of consummating the same, laid out and expended for traveling expenses of plaintiff to Lovelock, Nevada, San Francisco, California, New York City, and to various other places, for assaying, maps, surveys, expert services for mining examinations and reports, legal fees for the examination of titles and of the organization of the corporations, telegrams and telephones the sum of Eight Thousand eight hundred twenty and 21/100 (\$8,820.21) Dollars.

## VII.

That plaintiff also gave his time and efforts to said enterprise and the consummation of said contract during all of the time from April 2 to on or about June 1, 1919; that, as a result of the expenditures, time and efforts of the plaintiff, plaintiff succeeded and had pledged by himself and others associated with him an amount sufficient to meet [1124] any obligations of his under the terms of said contract, and sufficient to entitle him to receive sixty-two (62%) per cent of the stock of the Nevada Humboldt Tungsten Mines Company, sixty-two (62%) per cent of the stock of the Tungsten Products Company, and sixty-two (62%) per cent



of one-half of the Mill City Development Company under the terms of said contract of April 2, 1919, Exhibit "B."

### VIII.

That on or about the first of June, 1919, plaintiff discovered the falsity of the representations of the defendants, and thereupon his associates, who had agreed to furnish a large portion of the money necessary for the completion of the obligations of plaintiff under said contract, withdrew from said undertaking and refused to go into the same or to advance any money whatsoever for it.

### IX.

That had the representations of defendants, as to the amount and quality of ore opened up, developed and in sight in said mine, been true, said ores would have had a net value, over and above all expenses of cost of mining, transportation and sale of Three Hundred Twenty Thousand (\$320,000) Dollars; that the debts and obligations of said corporations were then, and are now, of about one hundred fifty thousand (\$150,000) Dollars; that the net value of said mines and of the stock of said companies, after the payment of all debts, had the representations of defendants been true, would have been about One Hundred Seventy Thousand (\$170,000) Dollars; that in truth and fact said corporations, and each of them, are now insolvent; that the total value of their assets, including all ore developed, in sight and available, did not then, or now, exceed the sum of *One Hundred Twenty* (\$120,000) Dollars; that the ore in sight in said mine [1125] was not

then, to wit on the 2d day of April, or now, of any other, further or greater value than Seventy Thousand (\$70,000) Dollars; that the value of the stock which plaintiff would have received under the terms of said contract, and to which he was entitled, had the representations of defendants been true, would have been One Hundred Five Thousand Four Hundred (\$105,400) Dollars.

X.

That by reason of the false and fraudulent representations aforesaid plaintiff has been damaged in the sum of One Hundred Fourteen Thousand Five Hundred Seventy-nine and 44/100 (\$111,579.44) Dollars.

WHEREFORE, Plaintiff prays judgment against the defendants, and each of them in the sum of One Hundred Fourteen Thousand Five Hundred Seventy-nine and 44/100 (\$114,579.44) Dollars.

NORCROSS, THATCHER & WOODBURN,  
Attorneys for Plaintiff. [1126]

EXHIBIT "A."

THIS AGREEMENT made between David Taylor, of Denver, Colorado, party of the first part, and L. A. Friedman, C. W. Poole, R. Nenzel, C. H. Jones, H. J. Murrish, G. K. Hinch, John G. Huntington, J. T. Goodin, V. A. Twigg, and Lena J. Friedman, all residents of Lovelock, Nevada, being the holders of ninety-nine (99%) per cent of the capital stock of the Nevada Humboldt Tungsten

Mines Company and the Tungsten Products Company, and L. A. Friedman, as trustee, parties of the second part;

WITNESSETH:

THAT, WHEREAS, said L. A. Friedman, C. W. Poole, R. Nenzel, C. H. Jones, H. J. Murrish, G. K. Hinch, John G. Huntington, J. T. Goodin, V. A. Twigg, and Lena J. Friedman, are the owners and holders of stock in each of the above companies, the number of shares of stock in each company being set opposite their respective signatures hereto, and

WHEREAS, L. A. Friedman is Trustee for all other of said second parties hereto, of all of their interest in the Mill City Development Company, which said corporation is in the process of organization, and which said corporation has not as yet issued its stock, and

WHEREAS said second parties desire to sell all of their interest in the said Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company and said Mill City Development Company, all of which corporations are corporations organized and existing under the laws of the State of Nevada, and

WHEREAS said first party is desirous of securing an option to purchase the entire interest of all of said second parties in all of said corporations, and

WHEREAS said first party has this day entered into a contract with the Nevada Humboldt Tungsten Mines Company and [1127] said Tungsten

Products Company to advance said corporations the sum of One Hundred Thousand Dollars (\$100,000.00) to enable said corporations to continue their business and operations and to discharge a portion of their indebtedness.

1. NOW, THEREFORE, in consideration of the premises and in consideration of the said first party hereby entering into said agreement to advance said One Hundred Thousand Dollars (\$100,000.00) to said corporations, said second parties hereby grant and give to said first party an option to purchase all of the stock held by said second parties in the Nevada Humboldt Tungsten Mines Company and in the Tungsten Products Company, and all of the interests of said second parties in the Mill City Development Company at the price and in the manner hereinafter specified. This option shall be good up to and including the sixteenth (16th) day of July, 1919.

2. The price to be paid for all of said stock in all of said corporations owned by all of said second parties shall be fifty cents (50¢) per share for each share of stock held by said second parties in the Nevada Humboldt Tungsten Mines Company, and said second parties shall transfer, assign and set over unto said first party without further charge or cost to said first party, all of the stock owned by said second parties in the Tungsten Products Company and the Mill City Development Company which they now own or shall be entitled to upon the complete organization of the Mill City

Development Company; total purchase price shall be \$498,400.00.

3. Said second parties will during the life of this option pay all of the debts and obligations of all of the said corporations; and agree that said corporations will maintain their plants and equipment in their present condition of [1128] efficiency, and will continue the present development work as it has heretofore been conducted. Said second parties will also complete the organization of the Mill City Development Company and discharge all of their obligations to said Mill City Development Company.

4. It is further understood and agreed that no dividends of any kind, nature or description shall be paid by said corporations during the life of this option, and that none of the assets of said corporations shall be disposed of other than scheelite concentrates provided that replacements of equipment shall be permitted.

5. It is further understood and agreed that no increase of salaries or bonuses shall be made, given, or paid to any officers or directors or stockholders of said corporations during the life of this option.

6. It is further understood and agreed that in case said option is exercised and said debts and obligations of said corporations are not paid at the time of the exercise of said option, the said first party shall deduct a sufficient amount from the purchase price to pay all outstanding debts and obligations and engagements of said corporations.



7. It is understood and agreed that the purchase price for said stock shall be paid as follows: \$100,000.00 at the time said option is exercised. \$25,000.00 on the first of each and every month thereafter until the total purchase price has been paid.

8. Said option shall be exercised by giving notice in writing to the Wells Fargo Nevada National Bank of San Francisco, and by mailing a written notice of such exercise of said option addressed to each of said parties, addressed to Lovelock, Nevada. Payments shall be made through the Wells Fargo Nevada National Bank of San Francisco, California. [1129]

9. Said second parties agree to deposit all of the stock of the Tungsten Products Company owned by said second parties, and Two Hundred Eighty-five Thousand (285,000) shares of stock in the Nevada Humboldt Tungsten Mines Company within Ten (10) days from the execution of this option in the Wells Fargo Nevada National Bank of San Francisco. It is understood and agreed that the remaining shares of stock in said Nevada Humboldt Tungsten Mines Company, upon which option is hereby given, owned severally by said second parties are now up as collateral for certain loans to said individuals, and as to such stock, it is hereby agreed that within ten (10) days from the execution of this agreement, each and every of the parties signatory hereto, who has such stock now up as collateral shall notify by letter the bank, person or company holding said stock

as security of the giving of an option on said stock and shall further instruct said bank, firm or company in the event that the amount secured by such stock is not paid on or before July 15, 1919, to send the evidence of such debt together with the stock to the Wells Fargo National Bank for collection, with instructions to said bank, upon the payment of the obligation to place the stock, security therefor, with the escrow herein mentioned, and forthwith mail to the first party a true and correct copy of said letter.

10. That said second parties agree to discharge said loans prior to the exercise of said option. In case said second parties do not discharge said loans, said second parties agree that the Wells Fargo Nevada National Bank shall from the proceeds of the first One Hundred Thousand Dollars (\$100,000.00) deposited, pay such indebtedness to said parties and hold the same until the full purchase price has been paid. Upon the payment of the full purchase price of said stock all of said stock shall be delivered to said first party. [1130]

11. Said second parties further agree to deposit in escrow with said Wells Fargo Nevada National Bank resignations of all of their directors and to deliver one resignation to said first party for every One Hundred Thousand Dollars (\$100,000.00) as paid. Said second parties further agree that they will cause to be immediately elected to said Board of Directors of said corporation in place of the director resigning, the nominee of said first party. Upon the exercise of this option and

the payment of said One Hundred Thousand Dollars (\$100,000.00), the management of said corporations shall be turned over to said first party, and the said second parties will cause the Board of Directors of said corporations to name as general manager of Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company, the nominee of said first party, which general manager shall have full power and authority to remove any and all superintendents, foremen, agents, servants and employees of said corporations, and to employ any and all necessary superintendents, foremen, agents, servants and employees as may be necessary to operate said properties.

12. In the event said first party shall delay for a period of five (5) days to make any of the loans to said Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company called for in said loan agreement, the said second parties in their discretion may terminate this option by giving immediate notice thereof in writing to said first party.

13. Second parties agree that said One Hundred Thousand Dollars (\$100,000.00) loaned said Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company shall be used solely to pay operating expenses, to purchase of reasonable supplies and reasonable equipment, and to discharge the indebtedness of said corporations. [1131]

14. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this 16th day of January, 1919.

(Signed) DAVID TAYLOR,  
First Party.

L. A. FRIEDMAN, .....10,640 shares.

R. NENZEL, .....102,000 shares.

C. W. POOLE, .....119,160 shares.

H. J. MURRISH, .....101,000 shares

(C. H. JONES, .....100,000 shares.

(G. K. HINCH, ..... 10,000 shares.

(JOHN G. HUNTINGTON, .50,000 shares.

(J. T. GOODIN ..... 5,000 shares.

(V. A. TWIGG, ..... 3,000 shares.

Signed by R. NENZEL,

Attorney in Fact.

LENA J. FRIEDMAN, ..400,000 shares.

Second Parties,

L. A. FRIEDMAN,

Trustee. [1132]

### EXHIBIT "B."

THIS AGREEMENT this day entered into between David Taylor, of Denver, Colorado, first party, and L. A. Friedman, Lena J. Friedman, C. W. Poole, John G. Huntington, R. Nenzel, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg and H. J. Murrish, second party,

WITNESSETH:

WHEREAS the parties hereto, on or about January 16, 1919, entered into an agreement in respect to the purchase and sale of certain stock of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, reference to which contract is hereby made and which said contract is made a part hereof, and

WHEREAS the Nevada Humboldt Tungsten Mines Company on the same date, entered into an agreement with the said David Taylor for the advance of certain moneys on scheelite concentrates, as more particularly appears in said agreement to which reference is hereby made, and

WHEREAS this agreement is supplemented to both of said agreements and all of said agreements are now to be read together and considered as one in so far as applicable, due reference being had to the changes herein made, and

WHEREAS, owing to the demoralization of the tungsten market it seems impossible for the said David Taylor to market scheelite concentrates or to interest parties in the purchase of tungsten properties, and for that reason it is deemed probable that said Taylor will not be able to exercise his option contained in the above-mentioned agreement, and

WHEREAS, by reason of the facts herein named it may [1133] become impossible for the Nevada Humboldt Tungsten Mines Company and the other companies above referred to to secure sufficient



funds for the liquidation of their indebtedness, and

WHEREAS it is the purpose of this agreement to so modify the said option as to enable the said Nevada Humboldt Tungsten Mines Company and its allied companies to pay its debts, continue its operation and secure itself from the jeopardy of possible loss through suits by its creditors,

NOW, THEREFORE, in consideration of the premises and of the sum of One Dollar (\$1.00) each to the other in hand paid, it is mutually understood, covenanted and agreed as follows, to wit:

1. The first party undertakes to secure by borrowing for the Nevada Humboldt Tungsten Mines Company, and its allied companies, a sum sufficient to liquidate the indebtedness of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company, and the proportion of the indebtedness of the Mill City Development Company which the second parties owe, said indebtedness estimated to be the sum of Two Hundred and Twenty Thousand (\$220,000.00) Dollars, on or before June 16, 1919.

2. When or if the said first party shall secure the said sum sufficient to liquidate the entire indebtedness, as above provided, then and in such event the second parties promise, covenant and agree to transfer and deliver to the first party in full payment for services rendered in securing such sums of money, 62% of the issued capital stock of the Nevada Humboldt Tungsten Mines Company, 62% of the issued capital stock of the Tungsten Products Company, 62% of one-half of the issued capital

stock of the [1134] Mill City Development Company; that a deposit of the amount necessary to liquidate the indebtedness as herein provided, in the Wells Fargo Nevada National Bank, shall be sufficient evidence of the performance of the conditions herein for the transfer and delivery of the stock as herein provided.

**IT IS MUTUALLY UNDERSTOOD AND AGREED:**

A. That the said sum raised by the first party herein is a loan to the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, and not a payment for stock; and that same is to be evidenced by the issuance of redeemable preferred stock with a maximum of 7% cumulative interest, provided that said stock shall not be sold for less than 95% of par net to the Company.

B. That the second parties hereto will cause a new company to be organized to which the assets of the companies herein described shall be conveyed; or shall amend the present articles of the Nevada Humboldt Tungsten Mines Company and its allied companies hereinbefore mentioned, in order to effectuate this agreement as shall be required by the first party.

C. It is agreed that in such incorporation, or in the amendment above provided, due and proper provision shall be made (1) that 80% of the Board of Directors must approve the sale of any of the property of the Company or the purchase of additional property; (2) that the cumulative voting

power of the common stock shall not be taken away; (3) that the net receipts from any relief received from the United States Government under the War-Minerals Relief Act of the corporations herein mentioned or any of them, shall inure to the benefit of such new corporation as may [1135] be formed; (4) that profits shall be distributed whenever same have accumulated to the amount of Fifty Thousand (\$50,000.00) Dollars or over, after the debts are paid, unless contrary provided by a vote of 80% of the Directors; (5) and further, that the preferred stock shall be redeemed out of the profits on June 30 or December 31, of every year, whenever the sum of Fifty Thousand (\$50,000.00) Dollars is accumulated, and before any dividends are paid on the common stock.

D. IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED that the performance of this agreement shall release the first party from any and all obligation to pay the purchase price of said stock mentioned in the option hereinbefore referred to.

E. IT IS FURTHER MUTUALLY COVENANTED AND AGREED that this agreement shall expire by limitation on June 16, 1919, and shall carry with it the option hereinbefore mentioned as executed on January 16, 1919, which shall also expire by limitation on said date, and they shall be of no further force or effect if the first party shall not have negotiated the loan and secured the money provided in Paragraph 1 hereof.

Time is the essence of this agreement, and each and every clause hereof shall bind and benefit the

heirs and assigns of the respective parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this 2d day of April, 1919.

(Signed) DAVID TAYLOR,  
First Party. [1136]

C. W. POOLE,  
R. NENZEL,  
H. J. MURRISH,  
L. A. FRIEDMAN,  
LENA J. FRIEDMAN,  
C. H. JONES,  
G. K. HINCH,  
J. T. GOODIN,

By R. NENZEL,  
Attorney in Fact.

V. A. TWIGG,  
J. G. HUNTINGTON,  
Second Parties.

C. W. POOLE,  
Attorney in Fact. [1137]

United States of America,  
State of Nevada,  
County of Washoe,—ss.

David Taylor, being first duly sworn, deposes and says: That he is the plaintiff in the above-entitled action; that he has heard read the foregoing complaint, and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated on in-

formation and belief, and as to such matters he believes it to be true.

DAVID TAYLOR.

Subscribed and sworn to before me this 9th day of August, 1919.

[Seal]

OBELINE SOUCHEREAU,

Notary Public.

[Endorsed]: In Equity. B-7. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, et al., Defendants. Answer of Defendant, W. J. Loring. Filed September 7th, 1920. T. J. Edwards, Clerk. John F. Davis, and Charles S. Wheeler and Charles S. Wheeler, Jr., Attorneys at Law, 14 Montgomery Street, San Francisco, California. [1138]

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In the District Court of the United States, in and for the District of Nevada.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COMPANY,  
a Corporation, W. J. LORING, C. W.  
POOLE, R. NENZEL, H. J. MURRISH,



L. A. FRIEDMAN, C. H. JONES, G. K. HINCH, J. T. GOODIN, V. A. TWIGG, J. C. HUNTINGTON and LENA J. FRIEDMAN, Individually,

Defendants.

**Opinion.**

HOYT, NORCROSS, THATCHER, WOODBURN & HENLEY, for Plaintiff.

COOKE, FRENCH & STODDARD, for Defendants, Nevada Humboldt Tungsten Mines Company, et al.

Mr. JOHN F. DAVIS, WHEELER & WHEELER, and Mr. BOOTH D. GOODMAN, for Defendant, W. J. Loring. [1139]

FARRINGTON, District Judge:

Throughout this decision the different corporations will be designated as Tungsten Company, Products Company and Development Company respectively.

January 16, 1919, plaintiff Taylor and the two defendants, Tungsten Company and Products Company, entered into a contract, a copy of which is attached to the complaint, in which Taylor agreed to advance \$100,000, and the two companies engaged to deliver to him at specified dates 170 tons of scheelite concentrates of certain guaranteed qualities. On the same day the defendants Friedman, Poole, Nenzel, Jones, Murrish, Hinch, Huntington, Goodin, Twigg and Lena Friedman, granted Taylor an option on all their interest in the three

corporations for a total purchase price of \$498,400, agreeing that all debts and obligations of the said companies should be satisfied out of the purchase money, and that the option should be good up to and including July 16, 1919. Later, and on the same day, January 16, 1919, Taylor, B. D. Thane and Howland Bancroft signed a writing, in which it was stated they mutually agreed that Taylor should use his best endeavors to carry out the terms of the option, make a sale of the property, and in the event of success, the profits should be divided, 60 per cent to Taylor, 20 per cent to Thane, and 20 per cent to Bancroft. Thane released all his claims to Taylor under this contract September 11, 1920. Bancroft's interest was understood to be in payment for his professional services. He retained it until March 29, 1920, and was otherwise compensated, because he "refused to testify as an expert for anybody as an interested party." (Transcript, p. 197.)

Beginning on the following day, January 17th, Bancroft made a ten-days' examination of the mine, and on February 15th reported as blocked out 8,111 tons of ore averaging 1.75 per cent WO<sub>3</sub>; and two thousand to three thousand tons unsampled. His conclusion was that "From many viewpoints the property is [1140] one of the most favorably situated tungsten mines in the United States. It is one of the few containing an ore-body which is commercial under pre-war market prices for this product and present high prices labor, supply and material conditions. At a market price

of \$6.25 per unit, treating 100 tons of ore per day with an 80% recovery, tungsten ore from this ore body will pay expenses if it runs 1% WO<sub>3</sub>. (As previously stated, the average tenor of the 8111 tons of indicator ore is 1.75% WO<sub>3</sub>. The average market price of tungsten trioxide for 10 years prior to the war was \$6.93 per unit)."

February 24th Taylor wrote there was no chance of interesting anybody in the purchase of the property at a half million dollar price, and suggested that the best thing to do all around was to close down the mine. After considerable correspondence relative to modifying the option, Poole, Nenzel, and Murrish, representing stockholders, proceeded to Denver, arriving Sunday, March 30th. April 2d a new agreement was executed, a copy of which is attached to the complaint, marked Exhibit "C." In this agreement Taylor undertook to secure by borrowing for said companies, on or before June 16, 1919, a sum sufficient to liquidate the indebtedness of the Tungsten Company, the Products Company, and the share of the indebtedness of the Development Company which the second parties owed. The indebtedness was estimated to be \$220,000. The parties of the second part covenanted and agreed to deliver to Taylor in full payment for his services 62 per cent of the issued capital stock of the Tungsten Company, 62 per cent of the issued capital stock of the Products Company, and 62 per cent of one-half of the issued capital stock of the Development Company, if on or before said date he secured a sum sufficient to

liquidate the indebtedness as provided. It was further [1141] agreed that a deposit of the amount necessary to liquidate the indebtedness in the Wells Fargo Nevada National Bank "should be sufficient evidence of the performance of the conditions herein, for the transfer and delivery of the stock as herein provided." It was also provided that the sum so raised should be a loan to the three companies, and not payment for stock, and should be evidenced by the issue of redeemable preferred stock, "with a maximum of 7 per cent cumulative interest." The stock was not to be sold for less than 95 per cent of par, net to the company. The second parties agreed to cause a new company to be organized to which the assets of the three corporations should be conveyed, or to amend the present articles of the three companies "in order to effectuate this agreement as shall be required by the first party." Certain provisions to be made in such incorporation or amendment were specified. It was also provided that the contract should expire June 16, 1919, and carry with it the option of January 16th, and that time should be of the essence of the agreement.

In May, Bancroft again examined the mines. On the 22d instant, while the examination was in progress, he received a letter dated May 20th, from Taylor, stating that his attorney Jackson was planning to leave New York May 23d for Lovelock.

"I do not," so the letter reads, "wish to go to this expense if your examination does not check up our idea that there is at least 40,000

tons of ore assured, with probabilities of a big additional tonnage, so that, if upon receipt of this letter you can give me any idea as to whether you think the tonnage is there or not, I wish you would wire me either 'advise postponing lawyer's trip,' or 'advise having lawyer leave at once.'—If it is in any way possible I want to get the deal closed before the first of June." (Exhibit "K.") [1142]

May 22d Bancroft wired Taylor:

"Your letter 20th just received. Required tonnage exposed on at least two sides. Can give no positive assurance regarding tungsten contents until receipt of assay returned. Believe property will hold up and my former favorable opinion remains unchanged." (Exhibit 1.)

On the next day, May 23d, Taylor wired the Tungsten Company at Lovelock:

"Bancroft's estimate satisfactory.— Have auditors wire us approximate indebtedness.— Our lawyer Jackson due Lovelock Wednesday night or San Francisco Thursday night. Would Murrish prefer have him stop Lovelock on way out, or meet him San Francisco." (Exhibit 23.)

The Tungsten Company replied, asking that Jackson stop at Lovelock, and stating the accounts payable were \$5,000 in excess of estimates; that overcharge on freight and adjustments would probably reduce that amount \$4,000, and that the ex-



cess could be satisfactorily explained. (Exhibit "S" and "T.")

May 26th Taylor wired Poole, who was then in Washington:

"Nenzel now reports indebtedness five thousand more than estimated. Believe your presence Nevada imperative if any deal to be closed." (Exhibit 2.)

And on the 28th he wrote Poole that the statement of indebtedness given him April 30th was not an estimate, but the exact statement of accounts on that date; that neither he nor Thane could go to their people and ask them to advance the additional \$5,000; that he could not himself take care of this additional loan, because he would have to dig to the bottom of his pockets to raise the necessary \$150,000 which would be available in cash June 2d, and suggested a method by which the stockholders of the mine could take care of this \$5,000 themselves. [1143] (Exhibit "E.") Thane expected to advance \$25,000 of the \$150,000, but on the 29th he wired Poole from New York to arrange with his associates for an extension of thirty days on this \$25,000. (Exhibit 25.)

On the 30th, while Taylor was en route from Denver to Lovelock, he wired Thane as follows:

"Bancroft original tonnage estimate all right but large part not commercial thus accounting for only 20,000 tons average recoverable tungsten 1.46 per cent tungstic acid showing sure profit of only hundred thousand dollars. Will endeavor extend present option six

months having friendly bankrupt proceedings and myself appointed receiver make Poole superintendent build assay office get assayer at mine and make agreement with court that we will exercise option whenever Bancroft will certify to 40,000 tons of 1.4 recoverable developed ore on at least two sides. Bancroft still believes general prospects for big cheap mine excellent. On this basis will you agree to take twenty-five thousand on same basis when requisite tonnage and grade developed? If you approve suggest wiring Poole urging him to favor this plan address Lovelock Saturday.” (Exhibit “L.”)

The telegram indicates Taylor contemplated a better bargain, not a relinquishment of any of his right to purchase the property.

During the first week in June, Taylor with his attorneys Jackson and Bayless, was in conference with the defendants Poole, Murrish, Nenzel and Jones, in San Francisco. Jackson testified that he and Taylor wanted to go to San Francisco, because they felt it would be possible, with the co-operation of creditors, to make a deal on substantially the lines of the April 2d contract, with advances pro-rated to the condition of the mine as disclosed by Bancroft; it seemed to them that San Francisco was a better place to negotiate.

Poole testified that Taylor told him not to tell his [1144] associates in the Tungsten Company that Bancroft's report was unfavorable.

“He said, ‘I want to go on down to San Francisco and arrange a new deal, and if they know that I am not going through with this deal they probably won’t go. I think I can deal with them better in San Francisco than I can here.’ He says, ‘You owe good money, don’t you’? I said ‘Yes; we owe money.’ ‘Well,’ he says, ‘I want to see Goodin, and have him come to San Francisco, and if these fellows get obstreperous he can put the screws to them.’ ” (Trans., p. 397.)

Loring testified that about June 25th, or some time after the middle of June, he had breakfast with Taylor at the Belmont Hotel in New York. During the conversation Taylor stated that the mine had not developed in accordance with his anticipations; that it “had developed 19,800 tons of ore, but by a stretch of imagination he could bring it up to 23,000 odd tons. I don’t remember the exact tonnage that he had set out to develop—a larger tonnage. ‘Well,’ I said, ‘then you don’t propose to go on with the deal’? He said ‘I do.’ He said, ‘I am going to take the mine away from the boys, or away from Friedman,’ or something to that effect, and looked me right in the eye when he said it.” (Trans., p. 543.)

Jackson testified that at the San Francisco conference he stated to Murrish and his associates that Taylor’s reason for entering into the contract of April 2d was Poole’s statement in Denver that the mine contained 60,000 tons of commercial ore, and it now developed that the representation was

a mistake, as Bancroft, who had just examined the mine, reported there were but 20,000 tons.

Taylor's proposal for a new agreement, embodied in a writing presented to the defendants at San Francisco (Exhibit [1145] 17), provided for the organization of a new corporation, to which should be conveyed the assets of the Tungsten Company, the Products Company, and one-half of the issued stock of the Development Company. The officers of the new company were to be Taylor president, Thane managing director, Poole mine superintendent, directors, Taylor, Brown, Friedman, Poole, and a representative of the creditors. Taylor on his part was to purchase \$85,000 of the company's bonds, paying 95 per cent of their face value, the bonds to draw 7 per cent interest, and to be a first lien on all the ore blocked out in the mine. The money derived from the bonds thus sold to Taylor was to be applied, \$10,000 for working capital, the remainder in payment of creditors' claims under \$500; and a dividend of about 45 cents on the dollar to other creditors. The creditors were to agree to defer enforcement of their claims until Taylor should have reduced the mortgaged ore to concentrates; the concentrates were to be sold by Taylor, and the proceeds applied, first, to the expenses, and second, to the redemption of the bonds. It was further provided that when an engineer selected by Taylor certified that 20,000 tons of additional ore were blocked out, Taylor was to purchase additional bonds at 95 per cent of the face value, bearing 7 per cent interest, secured and paid as

the first bonds, sufficient in amount to liquidate the debts, but no more than enough to net the company \$65,000 for that purpose. Sixty-two per cent of the stock in the new company was to be issued to Taylor for his services. Each and all of the creditors were to jointly and severally agree not to take or commence any proceedings against the new company which would in any manner embarrass Taylor in the collection of his advances. And finally, the agreement was not to become effective, unless creditors owning 95 per cent in amount of the scheduled claims in excess of \$500, became parties thereto. (Exhibit "A-1.")

This proposed agreement was rejected by the creditors as well as by the stockholders. [1146]

July 1st, defendant Loring sought an option on the property, which, as finally arranged, contemplated the payment by Loring of \$333,333.33 in nine payments, the first \$50,000 to be made September 1, 1919, the last, of \$25,000, February 4, 1921. Out of these payments the debts, then estimated to be \$200,000, were to be paid. August 10th Taylor wired Loring asking what interest the latter had bought in the Tungsten property, stating that the companies and the stockholders owed him considerable money, and that his attorneys considered he had a good case for compelling present stockholders to assign him control of the stock of both companies, or as an alternative, heavy damages. (Exhibit 28.) On the next day Loring replied that he held an option on the Nevada Humboldt interest. (Exhibit 29.) August 16th Taylor



commenced two actions in this court; the first against the Tungsten Company and the Products Company, number 2262, to recover the sum of \$9,-179.44, as the balance due on account for money loaned. This action was settled by the payment to Taylor of \$7,334.04, in December, 1919, and February, 1920. The evidence shows that Taylor's attorneys received the payments in the knowledge or belief, as was the fact, that this money came from payments made by Loring on the purchase price of defendants' properties. (Trans. p. 563.)

The second action, number 2263, was brought August 16, 1919, against Poole, Nenzel, Murrish, Friedman, Jones, Hinch, Goodin, Twigg, Huntington and Lena Friedman, to recover the sum of \$114,579.44 damages. The complaint was sworn to by Taylor August 9, 1919, one day before he wired Loring asking what if any Nevada Humboldt interests the latter had bought. In it was set forth the same matters which are set forth in paragraphs 4, 5, 6 and 7 of the complaint in the present case, the substance of which is that the defendants last named had agreed to convey to him 62 per cent of the issued capital stock of the [1147] Tungsten Company, a similar portion of the stock of the Products Company, and 62 per cent of one-half of the issued capital stock of the Development Company, in consideration of his raising by borrowing for said companies sufficient money to pay their debts; that in order to induce him to enter into the contract of April 2, 1919, they had falsely and fraudulently represented to

him that there was in said mines on that date, blocked out and ready for mining, "over 60,000 tons of scheelite ore, which would carry from 1.50% of tungstic acid to 1.75% tungstic acid"; that plaintiff, believing and relying on such representations, entered into the contract, and incurred expenses in the sum of \$8,820.21; that he had given his sole time and attention to raising said moneys until about June 1st, when he learned that the representations were false, whereupon his associates, who had agreed to furnish a large portion of the money called for by the contract, declined to do so. He also alleged that if defendants' representations had been true, the ores would have had a net value of more than \$320,000, and the net value of the mines above the indebtedness of the companies, would have been \$170,000; that the corporations were then, and each of them was, wholly insolvent; that the total value of the assets did not exceed \$120,000; that the ore in sight April 2d was not of any greater value than \$70,000; that the fair value of plaintiff's 62 per cent of the stock, if the representations had been true, would have been \$105,400; and that by reason of such false representations he had been damaged in the sum of \$114,579.44.

On the same day that the action for damages was commenced, a written agreement was executed in which the Tungsten Company and the Products Company covenanted to sell their properties to Loring, and he agreed to pay a third of a million dollars therefor. (Exhibit "A-12.") This con-

tract was ratified [1148] and approved by the owners of more than 95 per cent of the issued capital stock of the Tungsten Company, and by the owners of all the issued capital stock of the Products Company.

At the meeting of the stockholders of the Tungsten Company, held August 23, 1919, Taylor's protest was received, read and filed. The only expressed grounds of his objection were that the meeting was called without authority of law; that the proposed action was beyond the authority of the directors or of the stockholders; that no proper, sufficient or adequate notice had been given of the meeting, and that in ratifying or confirming the action of the directors of said corporation in entering into any agreement of purchase and sale of all its property, they would be exercising powers not granted to the directors of the corporation, or to its stockholders.

September 26th, after Loring had made his first payment of \$50,000, Taylor served notice on the Tungsten Company and its board of directors, and also on Friedman and his associates, demanding that the stockholders meet immediately, and set aside the action whereby they had authorized contracts with and conveyances to Loring; that appropriate actions or suits be commenced to declare the conveyances null and void, because the stockholders' meeting of August 23d was held without proper notice, and because neither the corporation, its board of directors or its stockholders had au-

thority to execute conveyances disposing of all the corporate property.

October 16, 1919, Taylor brought a suit in this court against Loring and the Tungsten Company, asking that all conveyances, deeds, assignments and bills of sale executed by the company to Loring, the contract of August 16, 1919, between Loring and the Company, and the ratification of the same by the stockholders, be set aside. Prior to this suit, designated as B-1, Loring had paid in performance of his contract with the Tungsten Company and the Products Company the sum of \$100,000. [1149]

April 17, 1920, Taylor commenced the present suit. In his complaint he alleges that after he had notified Friedman and associates that he probably would not be able to exercise his option under the contract of January 16, 1919, the defendants Poole, Murrish, Nenzel and Friedman, (1) by means of telegrams and letters informed plaintiff that further and new development work in said mines had placed in sight large quantities of scheelite ore of commercial value; (2) that about April 2d, 1919, the defendants Poole, Murrish and Nenzel, at Denver, Colorado, represented to him that since the examination of the mining claims by Bancroft, additional ore bodies of equal grade and quality had been developed, and that there was then blocked out over 60,000 tons of scheelite ore, which would carry an average of 1.75 per cent tungstic acid; that each and all of said representations were false and untrue, and were known by the defendants to be un-

true, and were made for the purpose of deceiving plaintiff and causing him to undertake and carry out the terms of the contract of April 2d; that in reliance on said representations he entered into the contract, gave his time and efforts, and expended more than \$8,000 in carrying out his obligations thereunder, until about June 1st, when he discovered the representations were false; then his associates, who had agreed to furnish a large part of the money, refused to advance any more. In addition, plaintiff alleges full performance on his part; refusal of the defendants to organize a new company, or amend the articles of incorporation of the Tungsten Company, or deliver the 62 per cent of their stock; that the stock at and before the commencement of the suit had no market value; that there is no method of ascertaining the amount of damages plaintiff has or will suffer; that defendants had contracted to sell the property to Loring; that meetings of the stockholders to ratify and confirm the contract were without adequate notice; that plaintiff promptly demanded a rescission of the sale, but the officers, directors and stockholders refused to set aside the [1150] pretended conveyances to Loring or to commence any action; that Loring took said contracts and deeds with full notice of the plaintiff's rights, and was regularly informed thereof before he had in any wise performed any part of the contract; that another meeting of the stockholders of the Tungsten Company had been called for April 19, 1920, to further authorize and ratify the sale to Loring, and unless restrained by order



of this court, the 62 per cent of the capital stock, which is the rightful property of plaintiff, would be voted in favor of authorizing such sale, to the great and irreparable injury of plaintiff; that about June 1, 1919, plaintiff offered to perform each and every covenant on his part to be performed, provided defendants would allow him an abatement of certain terms therefor for and on account of said false and fraudulent representations; and that plaintiff has no plain, speedy and adequate remedy at law;

“Wherefore, plaintiff prays judgment and decree of this Honorable Court, decreeing that the defendants Poole, Nenzel, Murrish, L. A. Friedman, Jones, Hinch, Goodin, Twigg, Huntington and Lena J. Friedman be compelled to specifically perform their said contracts and deliver to the plaintiff 62 per cent of the stock of the Nevada Humboldt Tungsten Mines Company, 62 per cent of the stock of the Tungsten Products Company and 62 per cent of the stock of the Mill City Development Company; that plaintiff have an abatement of the provision of said contract, or of the whole thereof for and on account of the false and fraudulent representations of the defendants, as shall be determined by the Court to be just and equitable”; that defendants last named be enjoined from voting said 62 per cent of said capital stock at any stockholders’ meeting, in favor of any disposition of said property to Loring, or to any one else, until further order of this Court. [1151]

This suit was not commenced until after the Tungsten Company and the Products Company had received from Loring on the purchase price of their property \$250,000, and Taylor had received out of that sum \$7,334.04 in settlement of his action number 2262, and not until after the debts of the companies had been paid.

Taylor's whole case rests on the truth of his allegations that false and fraudulent statements were made to him, and that he relied on them to his prejudice. The burden is on him to prove these allegations by a fair preponderance of the evidence. This in my judgment he has failed to do.

The first charge of misrepresentation is as follows: Poole, Murrish, Nenzel and Friedman, for the purpose of inducing plaintiff to undertake the contract of April 2d,

“Falsely and fraudulently and by means of telegrams and letters informed plaintiff that further and new development work had been carried on within said mines, mining claims and mining rights of the Nevada Humboldt Tungsten Mines Company, which had developed and placed in sight, blocked out and made ready for mining, large quantities of scheelite ore of commercial value, and capable of being concentrated, and the concentrates so returned being of great value.”

About the middle of February, Taylor had Bancroft's report, showing in the mines 8111 tons of ore, commercial with tungsten selling at \$6.00 per unit; that the average price for ten years before

the war had been \$6.93; that "the average tenor of the ore was 1.75% tungsten trioxide"; and that at a market price of \$6.25 per unit, treating 100 tons per day with an 80 per cent recovery, the ore would pay expenses if it carried 1% tungsten trioxide. February 14th Nenzel wrote Taylor that conditions at the mine were exceptionally bright: [1152]

"On the number two south working we have opened up an ore body which is over 15 feet wide and a good grade of ore. On the number one south \* \* \* yesterday we relocated the ore which is of a good grade." (Exhibit 2.)

Ten days later, February 24th, Nenzel wired Taylor as follows:

"The number one drift south is 85 feet beyond granite dyke. (1) Ore low grade. Drift number one 60 feet beyond Bancroft sampling. Number two south tunnel 60 feet beyond Bancroft sampling. (2) Value of ore  $1\frac{1}{2}$  per cent. Number 2 north 275 feet from shaft, average width of vein 9 feet; (3) ore milling 1%. Number 2 south 100 feet beyond Bancroft sampling. Average width of vein  $4\frac{1}{2}$  feet. (4) Value of ore one-half of one per cent. Number 3 north drift 60 feet from shaft. Vein 10 feet wide. (5) Value of ore  $1\frac{1}{2}$  per cent. Number 3 south 55 feet from shaft. Five feet wide. (6) 1% ore. (7) Main working shaft has been advanced 24 feet all in good ore." (Exhibit 3.)

(The numbering in the last telegram is mine.)

Tested by Bancroft's assays (Exhibit 19), item 1 is correct. Item 2: Bancroft's assay taken 60 feet beyond his first sampling in number 2 south was 2% instead of 1.50%. The average of Bancroft's seven assays in that drift was .63%. Item 3: Bancroft's assay taken 275 feet north from the shaft in number two was 1.60% instead of 1%. Item 4 seems to be inaccurately designated. Item 5: Bancroft's nearest assays 60 feet north on number three, were 1.20% and 1.35% instead of 1.50%. Five assays taken by Bancroft within 60 feet from shaft averaged 1.89%. Item 6: Bancroft's nearest assays, 55 feet south from the shaft on number three, were .35% and .75% instead of 1%. Six assays taken by Bancroft within that 55 feet averaged 1.12%. Item 7 is correct. [1153]

How and to what extent Taylor was misled by these telegrams is shown in his letter written February 24th to Nenzel in which he says:

"In view of the present tungsten situation, I do not believe there is the remotest chance of interesting anybody in the purchase of a property at half a million dollar price. The best thing to do all around would be to close down."

This is followed by an inquiry as to whether defendants would consider selling their stock to him at a reduced price. (Exhibit 1.)

March 7th Taylor wrote the company that the results of the development work in the mine were most gratifying, and if

"they continue as well, I think there is a chance that by the beginning of April I may be

able to persuade some New York people to advance the necessary money, and clean up all the companies' indebtedness in return for some modified form of an option."

March 10th Nenzel wrote Taylor that the main shaft had been sunk to a depth of 60 feet

"since our telegram to you giving the new development work, and we are glad to inform you that we have encountered some very rich ore. The ore contains so much scheelite that we are unable to handle more than 40 tons per 24 hours in the mill when working on ore taken from the shaft. How long this will continue we do not know, but it certainly looks very encouraging."

This was literally true. At the time the letter was being written they were sinking through ore assaying, according to Bancroft, 3.55 per cent and 2.45 per cent tungstic acid, and they had just passed through some assaying as high as 5.00 per cent. (Exhibit 19.)

On the following day, March 11th, Taylor wrote the Tungsten Company, refusing to advance \$15,000 on a carload of ore to be shipped. He did not believe that a *bona fide* bid [1154] of more than \$6.00 per unit for tungsten could be gotten out of any domestic customer.

"It is possible," he says, "if I could talk the general situation over with some of you we could arrive at some solution of the entire matter. Possibly Mr. Murrish or some of the rest of you could come to Denver, and if they



come over with the idea of some financial rearrangement, it would be well for them to have a balance sheet with books, and a full statement showing the amount and present status of all the indebtedness."

March 12th Nenzel wired that the mine never looked so good. On the 21st Friedman wrote Taylor: "The mine is looking better than ever." March 25th Friedman wired Taylor, suggesting that he and Bancroft come to Lovelock for a conference as to modifying the option, and said:

"I am sure you will find mine development fulfilling your most sanguine expectations. I am confident that we could arrive at some modified arrangement as suggested in your correspondence."

On the same day, March 25th, Taylor wrote Friedman that neither he nor Bancroft could go to Lovelock, and suggested that Friedman or Poole come, or that Poole, Murrish and Nenzel be appointed a committee by the stockholders to readjust the option. "Regarding the exercise of the option, it certainly looks pretty blue at present." For a readjustment he suggested some arrangement whereby cash could be furnished to liquidate all the company's indebtedness, and he acquire 75 per cent, or all of the stock of the company, and pay for it out of future earnings.

March 27th Nenzel wrote Taylor that no accurate survey of mining development had been made since Bancroft's examination of the mines in January. He also said they had drifted both north and

south from the shaft on the fourth level, "all in exceptionally high grade ore." Bancroft later took [1155] two assays, one on the face of each drift, and about 15 feet from the shaft. The returns were 1.40 per cent and 1.45 per cent.

A comparison of Bancroft's two reports (Exhibits 15 and 19) shows that there was twice as much commercial ore blocked out in May as in the latter part of January. It also shows that the main shaft between the third and fourth levels was sunk in very rich ore. The 24 feet all in good ore mentioned by Nenzel, and the 60 feet by Friedman, were between these two levels. Bancroft reports eight assays or ore in that space as follows: 1.4, 0.75, 1.85, 5.00, 3.25, 1.85, 3.55 and 2.45 or an average of 2.51 per cent.

In view of this correspondence and Bancroft's second report, it is impossible to find that the letters and telegrams in evidence from defendants to Taylor prior to April 2, 1919, contained fraudulent misstatements, or that by anything in such letters and telegrams Taylor was misled.

The second charge of misrepresentation is that Poole, Murrish and Nenzel, at Denver, falsely and fraudulently represented to Taylor that since the examination of the mining claim by Bancroft in January, additional ore bodies had been developed, and that there was then blocked out, in sight and ready for mining over 60,000 tons of scheelite ore which would carry an average of 1.75 per cent tungstic acid; that such representations were false, made for the purpose of inducing him to undertake

and carry out the terms of the agreement of April 2d, and were relied on by him to his prejudice.

Taylor swears that Poole made the statement, but Poole denies it, and in his denial is supported by Murrish and Nenzel. They go even further, and say that prior to the time when they had agreed on the terms to be incorporated in the new agreement no statement had been made as to the tonnage in the mine. This seems unreasonable when we reflect that the selling price of a mining property depends so much on the [1156] quantity of commercial ore in sight; but nowhere in the correspondence between Taylor and defendants subsequent to April 2d and prior to June 1st, is there any mention of 60,000 tons of ore in the mine. It is not mentioned in Taylor's telegram of April 3d to Bancroft, outlining the terms of the new agreement, or in the prospectus prepared by Taylor and Thane early in May, in which it is stated that on April 1st a new survey indicated ore reserve of 41,000 tons (Exhibit "U"). In a letter dated April 17th, addressed to Roy C. McKenna, Vanadium-Alloys Steel Company (Exhibit 33), and in another of the same date addressed to the Crucible Steel Company (Exhibit 32), Taylor said:

"So far the shaft has been sunk 180 feet below the depth at the time of Bancroft's examination, and one of the upper levels extended.

\* \* \* The result is now assured minimum of 43,000 tons of ore."

May 14th Taylor wired Bancroft: "Want your statement that 40,000 tons sure with 1.4 per cent

recoverable." (Exhibit "G.") In a letter of the same day (Exhibit "N"), Thane urges Bancroft to have his report complete and available in San Francisco before May 31st:

"First on the tonnage in sight \* \* \*

This must be known in order that we may be certain there is sufficient tonnage to absolutely guarantee the \$150,000 necessary to close this transaction. \* \* \* If we are able to close it, it will be a good piece of business for all of us."

If, as Taylor states in his telegram to Thane, dated May 30th (Exhibit "L"), 20,000 tons having an average recovery of 1.46 per cent tungstic acid shows a sure profit of \$100,000, we may safely conclude that 40,000 tons would yield a sure profit of \$200,000. If there were 40,000 tons of ore in the mine capable of yielding a profit of \$200,000, it would seem to be a profitable venture on Taylor's part to loan the company [1157] \$150,000 at 7 per cent interest, if his loan were secured as provided in the contract of April 2d, and he received 62 per cent of the capital stock of the company for his services in making the loan. When he entered into the contract of April 2d he had before him Bancroft's table (Exhibit 15, p. 1), showing with a simple calculation that the net value of 8111 tons at \$9.00 per unit would be over \$61,000; the net value of 20,000 tons would be about \$150,000; of 40,000 tons about \$300,000; and of 60,000 tons about \$450,000. The price specified in the option of May 16th, paragraph 2, was \$10 per unit, and

within one week after the contract of April 2d was executed, the Tungsten Company was offered \$9.00 per unit for 100 tons. (Exhibits 7, 35 and 44.) Of course it is possible that Taylor would not have entered into the agreement of April 2d if he had not believed there were in sight in the mine 60,000 tons of commercial ore; but the testimony, as well as the probabilities, fail to prove it. His first option, January 16th, fixed a price of \$498,400, or fifty cents per share for Tungsten Company stock. February 24th he suggested the option be so modified that he might advance, as a secured loan with 7 per cent interest, enough money to pay the company's debts and purchase stock at 28 cents per share, to be paid for out of the profits of the mine after the debts were paid. Of this proposition he wrote in the same letter it "means that you would be giving me a one-half interest in the mine for liquidating our present indebtedness." This proposition was made nine days after the date of Bancroft's first report showing 8111 tons of ore in the mine. March 7th he thought there might be a chance to raise money to clear up the indebtedness in return for a modified option. March 11th he wrote the tungsten situation was so bad the market value of tungsten would probably not be placed at over \$6.00; yet within a month thereafter the company seems to have been offered \$9.00. [1158] March 25th he wrote that as to exercising the option it looked pretty blue. He suggested raising enough money to pay the debts and the acquisition by him of 75 per cent of the stock, to be paid for out of



the future earnings of the mine. (Exhibit 12.) Eight days later the agreement which is alleged to have been induced by fraudulent representations, was entered into, in which he undertook to secure by borrowing enough money to pay the debts, and for such services he was to be given 62 per cent of the capital stock. May 23d, after he learned from Bancroft that the required tonnage of 40,000 tons was exposed, but that no positive assurance could be given regarding the tungsten contents until receipt of assay returns, he wired the Tungsten Company that Bancroft's estimate, 40,000 tons, was satisfactory. (Exhibit 23.) The question naturally arises, why did Taylor say that 40,000 tons were satisfactory, if he had been led to believe, and did believe, and would not have entered into the contract if he had not believed that there were actually 60,000 tons of commercial ore in sight in the mine? It was not until attorney Jackson came to Lovelock, about May 29th, that any mention was made, or any use was attempted to be made, of the alleged fraudulent misrepresentations. There is no hint of it even in his telegram to Thane from Ogden, dated May 30th. (Exhibit "L," *supra*.) Taylor's whole conduct indicates that he was satisfied in January as to the value of the property; that he determined then to secure it. From that time on his single purpose seems to have been to obtain it as cheaply as possible, and with the smallest possible outlay of money on his part. He testifies himself (Trans. p. 85), referring to the first day of the conference at Denver, before any statements as to tonnage are

claimed to have been made: "I was willing in a general way at that time to make a contract according to the terms that were finally arranged." And again he testified in relation to Poole's alleged false representations, that he supposed he was merely getting Poole's opinion based on such developments as then existed [1159] as to how many tons would probably be there. (Trans. p. 109.) First he secured an option under which he could acquire the property by paying 50 cents per share for stock, or a total of \$498,400. In February he began to urge a modified option, because, as he said, no sale of the property at that price was possible; the tungsten market was bad; the best thing to do all around was to close down the mine. April 2d, a new, and for him a better contract was executed, under which he was to receive 62 per cent of the stock if before June 16th he obtained as a loan to the company enough money to pay its debts, estimated at \$220,000. Early in May it was understood that it would be necessary to raise a loan of about \$150,000 to pay the debts. Later he was informed there had been a mistake, the debts had been underestimated about \$5,000. He at once wired (to Poole) that he believed Poole's presence in Nevada was imperative if any deal was to be closed. He also wrote Poole two days later, on the 28th day of May, stating that he personally could not take this additional loan of \$5,000, because he had to dig to the bottom of his pockets to raise the \$150,000. He asked Poole to talk the matter over with Jackson at Lovelock. On the next day Thane wired Poole

to procure for him (Thane) an extension of thirty days to raise his \$25,000. At Lovelock Poole was informed that Bancroft's report was unfavorable, and was cautioned, according to Poole's testimony, not to inform his associates, because if they knew Taylor did not intend to go through with the deal they would not go to San Francisco; he wanted to arrange a new deal, and he thought, as Jackson also testified, he could deal with them better in San Francisco than in Lovelock. About this time, May 30th, in a telegram to Thane, he outlined a plan to have the option of April 2d extended for six months, friendly bankruptcy proceedings, himself appointed receiver, Poole appointed superintendent, agreement with the Court to exercise option whenever Bancroft would certify to 40,000 tons of ore 1.4 per [1160] cent recoverable developed. He asked Thane if he approved to wire Poole (the very person who had, as he claims, fraudulently misled him into the agreement of August 2d), urging him to favor this plan. To the telegram is added the illuminating statement: "Bancroft still believes general prospects for a big cheap mine excellent." This plan, could it have been arranged, would have enabled him to operate the mine for six months without advancing or borrowing any money for the creditors. In San Francisco, June 2d, his proposition, in substance, was to advance \$85,000, instead of \$150,000, as a secured loan, of which \$75,000 would be distributed to creditors and \$10,000 used for working capital. Taylor was to be president, Thane managing director, and Poole superintend-

ent of the new company to take over and operate the mine. When an engineer, to be selected by Taylor, certified that 20,000 tons of additional ore were blocked out, Taylor was to advance not to exceed \$65,000 more for the creditors, and for his services he was to receive 62 per cent of the stock. His advances were to be a first lien; all the creditors were to agree jointly and severally, not to embarrass him in the collection of his advances. A meeting of the creditors was called, at which they were informed Poole and his associates would abide by their judgment. The creditors promptly rejected Taylor's proposition.

In my judgment Taylor was neither misled nor deceived by the defendants. He was following consistently an original plan to secure the property for the smallest possible outlay of money on his part. His forecast as to what the creditors would do was at fault; he failed to anticipate the competition of Loring, and made an offer at San Francisco which he must have known would not be accepted if the owners had any alternative.

I find the evidence is not sufficient to show that the alleged false representations as to tonnage in the mine were made; and even if there were such representations, Taylor was [1161] not thereby induced to enter into the contract of April 2d, or to attempt to perform its conditions. That contract, as well as the option of May 16th, expired by limitation June 16, 1919; prior to that date no deposit in the Wells Fargo Nevada National Bank of San Francisco of an amount sufficient to liqui-

date the indebtedness of the defendant corporations was made by or for Taylor. He never performed what he agreed in the contract to do; he never made an unconditional offer of performance, and never prior to June 16th was he actually ready, able and willing to perform unconditionally.

It is unnecessary in view of the conclusions reached on the merits of the case, to determine other issues raised by the pleadings. Plaintiff is not entitled to a decree requiring any of the stock of the Tungsten Company, of the Products Company, or of the Development Company to be delivered to him, or to an order restraining or controlling in any manner the use or voting of such stock.

Let a decree be entered in favor of defendants in accordance with the foregoing opinion.

Each party have thirty days within which to take such steps as he may be advised.

[Indorsed]: No. B-7. In the District Court of the United States, in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, et al., Defendants. Opinion. Filed August 10th, 1921. E. O. Patterson, Clerk. [1162]



In the District Court of the United States, in and  
for the District of Nevada.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA' HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING, C.  
W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, C. K.  
HINCH, J. T. GOODIN, V. A. TWIGG,  
J. C. HUNTINGTON and LENA J. FRIED-  
MAN, Individually,

Defendants.

### **Judgment and Decree.**

This cause came on to be heard on the 14th day of September, 1920, and thereafter was argued by counsel, and thereupon and upon consideration thereof,—

It appearing to the Court that the defendants did not, nor did any or either of them, either acting for themselves or for any other person or persons, or otherwise, make to the plaintiff at any time false and fraudulent or false or fraudulent representations whatsoever;

And it further appearing to the Court that it is not true that the plaintiff was induced to enter into the contract of April 2d, 1919, a copy of which is attached to plaintiff's complaint, marked Exhibit "C," or to perform its conditions, or any or either of them, by reason of any false and fraudulent or false or fraudulent representation or representations whatsoever,

And it further appearing to the Court that the said [1163] plaintiff never performed, or offered to perform, the covenants and agreements upon his part to be performed under the terms of said contract of April 2d, 1919, and that he was never at any time ready, able and willing to perform the said covenants and agreements of said contract, and that the plaintiff is not entitled to a decree requiring any of the stock of defendant Nevada Humboldt Tungsten Mines Company or of defendant Tungsten Products Company, or of defendant Mill City Development Company to be delivered to him, and that plaintiff is not entitled to an order restraining or controlling in any manner the use or voting of said stock, or to any equitable relief whatsoever,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that plaintiff take nothing by his bill, and that the same be, and it hereby is, dismissed, and that defendants and each of them have judgment against plaintiff for costs incurred herein, taxed as follows: defendant W. J. Loring at the sum of \$129.95/100 defendant Nevada Humboldt Tungsten Mines Company at the sum of \$150.30/100.

Done in open court this 13th day of September, 1921.

E. S. FARRINGTON,  
Judge.

[Endorsed]: No. B-7. In the District Court of the United States, in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Co., a Corporation, Tungsten Products Co., a Corporation, et al., Defendants. Judgment and Decree. Filed Sept. 13, 1921. E. O. Patterson, Clerk. John F. Davis, Attorney at Law, Humboldt Savings Bank Building, San Francisco, California. [1164]

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In the District Court of the United States, in and for the District of Nevada.

IN EQUITY—B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES COMPANY, a Corporation, TUNGSTEN PRODUCTS COMPANY, a Corporation, MILL CITY DEVELOPMENT COMPANY, a Corporation, W. J. LORING, C. W. POOLE, R. NENZEL, H. J. MURRISH, L. A. FRIEDMAN, C. H. JONES, C. K. HINCH, J. T. GOODIN, V. A. TWIGG, J. C. HUNTINGTON and LENA J. FRIEDMAN, Individually,

Defendants.

**Petition for Rehearing.**

To the Honorable E. S. FARRINGTON, District Judge:

The petition of plaintiff, David Taylor, respectfully shows and represents to this Honorable Court that, being aggrieved by the decree entered in the above-entitled action on the 13th day of September, 1921, wherein this Court dismissed the plaintiff's bill of complaint, and, being aggrieved by the decision and opinion of said Court in the above-entitled cause, upon which said decree was based, respectfully petitions this Honorable Court that a rehearing of the above-entitled action be granted by the above-entitled Court, and in that behalf, and as grounds therefor, plaintiff states:

I.

That the evidence is insufficient to justify said decision and the decree entered pursuant thereto, and that said [1165] decision and decree entered pursuant thereto are against law.

II.

Errors at law occurred during the trial, excepted to by plaintiff.

Dated: this 27th day of September, 1921.

NORCROSS, THATCHER & WOOD-  
BURN,

Attorneys for Plaintiff.

[Endorsed]: B-7. In the District Court of the United States, in and for the District of Nevada. David Taylor, Plaintiff vs. Nevada Humboldt

Tungsten Mines Company, a Corporation, et al.,  
Defendants. Petition for Rehearing. Filed this  
30th day of Sept. 1921. E. O. Patterson, Clerk.  
By O. E. Benham, Deputy. Hoyt, Norcross,  
Thatcher, Woodburn & Henley, Reno, Nevada.  
Attorneys for Plaintiff. [1166]

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In the District Court of the United States, in and  
for the District of Nevada.

IN EQUITY—B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING, C.  
W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, C. K.  
HINCH, J. T. GOODIN, V. A. TWIGG,  
J. C. HUNTINGTON and LENA J. FRIED-  
MAN, Individually,

Defendants.

**Order to Show Cause.**

Upon reading the petition for rehearing of the  
plaintiff in *the entitled* action, it is hereby OR-  
DERED that defendants, at 10 o'clock A. M., on the  
15th day of October, or as soon thereafter as the



business of the Court will permit, show cause, if any they have why said petition for rehearing should not be granted.

Dated: This 30th day of September, 1921.

E. S. FARRINGTON,

District Judge.

[Endorsed]: In Equity—B-7. In the District Court of the United States, in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, et al., Defendants. Order to Show Cause. Filed this 30th day of Sept. 1921. E. O. Patterson, Clerk. Hoyt, Norcross, Thatcher, Woodburn & Henley, Reno, Nevada. Attorneys for Plaintiff. [1167]

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In the District Court of the United States, in and  
for the District of Nevada.

IN EQUITY—B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING, C.  
W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, C. K.  
HINCH, J. T. GOODIN, V. A. TWIGG,  
J. C. HUNTINGTON and LENA J. FRIED-  
MAN, Individually,

Defendants.

**Stipulation Continuing Hearing Argument on  
Rehearing.**

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the setting of the argument on rehearing in the above-entitled case now set for October 15th, may be vacated, and that the same be set for hearing on the 25th day of October, 1921.

Dated: this 13th day of October, 1921.

HOYT, NORCROSS, THATCHER, WOOD-  
BURN, & HENLEY,

WM. WOODBURN,

Attorneys for Plaintiff.

COOKE, FRENCH & STODDARD,

Attorneys for Plaintiff.

JNO. F. DAVIS and

CHAS. S. WHEELER,

Per H. R. COOKE,

Attorneys for Deft. Loring. [1168]

[Endorsed]: In Equity—No. B-7. In the District of the United States, in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company et al., Defendants. Stipulation. Filed this 15th day of Oct. 1921. E. O. Patterson, Clerk. Hoyt, Norcross, Thatcher, Woodburn & Henley, Reno, Nevada. Attorneys for Plaintiff. [1169]

## MINUTES OF COURT—OCTOBER 15, 1921.

No. B-7.

DAVID TAYLOR

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
CO., et al.**Minutes of Court—October 15, 1921—Order Continuing Hearing of Arguments on Petition for Rehearing to October 25, 1921.**

Upon stipulation of counsel filed herein this day, it is ordered that the hearing of arguments on the petition for a rehearing, be, and the same is hereby, continued to and until October 25, 1921, at ten o'clock A. M. [1170]

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In the District Court of the United States, in and  
for the District of Nevada.

B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING, C.

W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, C. K.  
HINCH, J. T. GOODIN, V. A. TWIGG,  
J. C. HUNTINGTON and LENA J. FRIED-  
MAN, Individually,

Defendants.

**Stipulation Submitting Plaintiff's Petition for  
Rehearing.**

IT IS HEREBY STIPULATED that plaintiff's petition for a rehearing in the above-entitled case and the answer thereto of the defendants may, subject to the approval of the Court, be submitted to said Court for its decision thereon without argument and that counsel for either party may call said matter up at any time without notice and have the same finally submitted.

Dated: November 2, 1921.

NORCROSS, THATCHER & WOOD-  
BURN,

Attorneys for Plaintiff.

COOKE, FRENCH & STODDARD,

Attorneys for Defendants, Other than W. J.  
Loring.

JOHN F. DAVIS and

CHAS. S. WHEELER, Jr.,

Per C.,

Attorneys for Defendant, W. J. Loring.

[Endorsed]: Original. No. B-7. In the United States District Court in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, et al., Defendants.

Stipulation. Filed this 3d day of Nov. 1921. E. O. Patterson, Clerk. By O. E. Benham, Deputy. Cooke, French & Stoddard, Reno, Nevada. Attorneys for Defendants, Other Than W. J. Loring. [1171]

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No. B-7.

DAVID TAYLOR,

Complainant,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
CO., et al.

**Minutes of Court—November 8, 1921—Order Denying Plaintiff's Petition for Rehearing.**

Mr. H. R. Cooke, attorney for the defendants, appeared this day, and, upon stipulation of counsel filed herein, presented to the court plaintiff's petition for a rehearing, defendant's answer thereto and his statement that no further argument was contemplated or desired; thereupon, upon motion of counsel, it is ordered that this matter be, and the same is hereby, submitted. It is further ordered that plaintiff's petition be, and the same is hereby, denied. [1172]



In the United States District Court, in and for the  
District of Nevada.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING,  
C. W. POOLE, R. NENZEL, J. H. MUR-  
RISH, L. A. FRIEDMAN, C. H. JONES,  
G. K. HINCH, J. T. GOODIN, V. A.  
TWIGG, J. C. HUNTINGTON and LENA  
J. FRIEDMAN, Individually,

Defendants.

**Stipulation Continuing Hearing on Proposed  
Statement of Facts.**

It is hereby stipulated that the hearing of plain-  
tiff's notice and proceeding to have his proposed  
statement of facts settled may be postponed and the  
same heard on April 10th, 1922, at eleven o'clock  
A. M. of that day, or as soon thereafter as counsel  
can be heard.

Otherwise this stipulation is made without pre-  
judice to but expressly reserving all rights that the  
parties hereto may have in the premises.

Dated February 28th, 1922.

NORCROSS, THATCHER & WOOD-  
BURN,

Attorneys for Plaintiff.

CHAS. S. WHEELER and

JNO. F. DAVIS,

Per C.,

Attorneys for Defendant W. J. Loring.

COOKE, FRENCH & STODDARD,

Attorneys for All Other Defendants.

[Endorsed]: Original. No. B-7. In the United States District Court in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, et al., Defendants. Stipulation. Filed this 1st day of Mar. 1922. E. O. Patterson, Clerk. Cooke, French & Stoddard, Reno, Nevada. Attorneys for Defendants. [1173]

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MINUTES OF COURT—MARCH 6, 1922.

No. B-7.

DAVID TAYLOR

vs.

NEVADA HUMBOLDT TUNGSTEN MINES CO.

**Minutes of Court—March 6, 1922—Order Continu-  
ing Hearing on Settlement of Statement of  
Facts.**

No counsel appearing, it is ordered that the hearing upon the settlement of statement be, and the same is hereby, continued until the next motion day.

MINUTES OF COURT—APRIL 3, 1922.

No. B-7.

DAVID TAYLOR

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
CO. et al.

**Minutes of Court—April 3, 1922—Order Continuing Hearing on Motion to Settle Statement of Facts.**

No counsel appearing, IT IS ORDERED that the hearing on the motion to settle statement of facts be, and the same is hereby, continued to and until the next motion day.

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MINUTES OF COURT—APRIL 10, 1922.

No. B-7.

DAVID TAYLOR.

Complainant,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
CO. et al.,

Defendants.

**Minutes of Court—April 10, 1922—Order Continuing Hearing of Statement of Facts.**

Upon motion of Mr. H. R. Cooke, attorney for the defendants, IT IS ORDERED that the order

heretofore made and entitled herein setting the hearing of statement of facts for the 17th day of this month be, and the same is hereby, vacated and the same to be reset by counsel. [1174]

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In the United States District Court, in and for the  
District of Nevada.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING,  
C. W. POOLE, R. NENZEL, H. J. MUR-  
RISH, L. A. FRIEDMAN, C. H. JONES,  
G. K. HINCH, J. T. GOODIN, V. A.  
TWIGG, J. C. HUNTINGTON and LENA  
J. FRIEDMAN, Individually,

Defendants.

**Stipulation Continuing Hearing on Proposed  
Statement of Facts.**

IT IS HEREBY STIPULATED AND AGREED  
that the hearing of plaintiff's notice and proceeding  
to have his proposed statement of facts settled may  
be postponed and the same heard on May 25th,  
1922, at eleven o'clock A. M. of that day, or as soon  
thereafter as counsel can be heard.

It is further stipulated that the defendants above named waive any objections or right to object that they may have that the hearing and proceeding to have plaintiff's proposed statement of facts settled is not in time or will not be in time as above specified.

Dated: April 20th, 1922.

NORCROSS, THATCHER & WOOD-  
BURN,

Attorneys for Plaintiff.

CHAS. S. WHEELER and

JOHN F. DAVIS,

Per C.,

Attorneys for Defendant Loring.

COOKE, FRENCH & STODDARD,

Attorneys for All Other Defendants.

[Endorsed]: No. B-7. In the United States District Court in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, et al., Defendants. Stipulation. Filed this 22d day of April, 1922. E. O. Patterson, Clerk. Cooke, French & Stoddard, Reno, Nevada. Attorneys for Defendants. [1175]



In the United States District Court, in and for the  
District of Nevada.

IN EQUITY—No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING,  
C. W. POOLE, R. NENZEL, J. H. MUR-  
RISH, L. A. FRIEDMAN, C. H. JONES,  
G. K. HINCH, J. T. GOODIN, V. A.  
TWIGG, J. C. HUNTINGTON and LENA  
J. FRIEDMAN, Individually,

Defendants,

**Petition for Appeal and Order Allowing Same.**

To the Honorable E. S. FARRINGTON, District  
Judge:

The above-named plaintiff feeling himself ag-  
grieved by the decree made and entered in this cause  
on the 13th day of September, 1921, does hereby  
appeal from said decree to the Circuit Court of Ap-  
peals for the 9th Circuit, for the reasons specified  
in the assignment of errors, which is filed herewith,  
and he prays that his appeal be allowed and that  
citation issue as provided by law, and that the tran-  
script of the record, proceedings and papers upon

which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the 9th Circuit, sitting at the City and County of San Francisco, State of California.

And your petitioner further prays that the proper order touching the security to be required of him to perfect his appeal be made.

NORCROSS, THATCHER & WOOD-  
BURN,

Attorneys for Plaintiff.

Filed May 1st, 1922, in the District Court of the United States for the District of Nevada. [1176]

The foregoing petition is granted and the appeal allowed upon giving bond conditioned as required by law in the sum of Fifteen Hundred Dollars.

E. S. FARRINGTON,  
District Judge.

[Endorsed]: No. B-7. In the United States District Court in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corp., Tungsten Products Company, a Corp., Mill City Development Co., a Corp., W. J. Loring, C. W. Poole, R. Nenzel, H. J. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg et al., Defendants. In Equity No. B-7. Petition for Appeal. Filed this 1st day of May, 1922. E. O. Patterson, Clerk. Hoyt, Norcross, Thatcher, Woodburn & Henley, Reno, Nevada, Attorneys for Plaintiff. [1177]

In the United States District Court, in and for the  
District of Nevada.

IN EQUITY—No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING,  
C. W. POOLE, R. NENZEL, H. J. MUR-  
RISH, L. A. FRIEDMAN, C. H. JONES,  
G. K. HINCH, J. T. GOODIN, V. A.  
TWIGG, J. C. HUNTINGTON and LENA  
J. FRIEDMAN, Individually,

Defendants.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, David Taylor, as principal, and National  
Surety Company of New York as surety, acknowl-  
edge ourselves to be jointly and firmly bound to  
Nevada Humboldt Tungsten Mines Company, a  
Corporation, Tungsten Products Company, a Cor-  
poration, Mill City Development Company, a Cor-  
poration, W. J. Loring, C. W. Poole, R. Nenzel,  
H. J. Murrish, L. A. Friedman, C. H. Jones, G. K.  
Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington

and Lena J. Friedman, appellees in the above cause, in the sum of Fifteen Hundred (1500) Dollars, conditioned that, whereas, on the 13th day of September, 1921 in the District Court of the United States for the District of Nevada, in a suit depending in that court, wherein David Taylor was plaintiff and Nevada Humboldt Tungsten Mines Company, a Corporation, [1178] Tungsten Products Company, a Corporation, Mill City Development Company, a Corporation, W. J. Loring, C. W. Poole, R. Nenzel, H. J. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman, were defendants, numbered on the equity docket as B-7, a decree was entered against said David Taylor, and said David Taylor having obtained an appeal to the Circuit Court of Appeals of the United States for the 9th Circuit, and filed a copy thereof in the office of the clerk of the court to reverse the said decree, and a citation directed to said Nevada Humboldt Tungsten Mines Company, a Corporation, Tungsten Products Company, a Corporation, Mill City Development Company, a Corporation, W. J. Loring, C. W. Poole, R. Nenzel, H. J. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the 9th Circuit, to be holden in the city and county of San Francisco, in the State of California, on the 2d day of October, 1922.

Now, if said David Taylor shall prosecute his appeal to effect and answer all costs if he fail to make his appeal good, then the above obligation to be void, otherwise to remain in full force and effect,

Dated: April 29, 1922.

DAVID TAYLOR,

By GEO. B. THATCHER,

His Attorney in Fact.

NATIONAL SURETY COMPANY.

By F. J. PECK,

By W. M. GARDINER,

Its Attorneys in Fact. (Seal)

Approved: May 1st, 1922.

E. S. FARRINGTON,

District Judge for the District of Nevada. [1179]

[Endorsed]: No. B-7. In the United States District Court in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, etc., et al., Defendants. Bond on Appeal. Filed this 1st day of May, 1922. E. O. Patterson, Clerk. Hoyt, Norcross, Thatcher, Woodburn & Henley, Reno, Nevada, Attorneys for Plaintiff. [1180]



In the District Court of the United States, in and  
for the District of Nevada.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING,  
C. W. POOLE, R. NENZEL, J. H. MUR-  
RISH, L. A. FRIEDMAN, C. H. JONES,  
G. K. HINCH, J. T. GOODIN, V. A.  
TWIGG, J. C. HUNTINGTON and LENA  
J. FRIEDMAN, Individually.

Defendants.

**Praeceptum for Transcript of Record.**

To the Honorable E. O. PATTERSON, Clerk,  
United States District Court, in and for the  
District of Nevada.

You are hereby requested to prepare and certify  
to the United States Circuit Court of Appeals for  
the 9th Circuit, sitting at San Francisco, transcript  
on appeal in the above-entitled case, and the plain-  
tiff-appellant hereby designates and indicates por-  
tions of the records, papers and files to be incor-  
porated in the transcript on appeal as follows:

- (1) Pleadings.
- (2) Restraining order.

- (3) Statement of the evidence, together with a certificate of the Court or Judge approving the same.
- (4) Opinion of the Court filed August 25, 1921. [1181]
- (5) Final decree.
- (6) Petition for rehearing.
- (7) Order denying petition for rehearing.
- (8) Petition for appeal and order granting the same.
- (9) Citation on appeal and proof of service thereof.
- (10) Stipulations of the parties of date of April 20, 1922, relative to settlement of plaintiff's proposed statement of the evidence.
- (11) Praecipe and proof of service thereof.

You are also to incorporate in the record original of Exhibit 15; original Exhibit 20, a map, plate 5A: Exhibit "Y," a mine map.

Dated: This 1st day of May, A. D. 1922.

NORCROSS, THATCHER & WOODBURN.

Service by copy of the above praecipe for transcript is hereby acknowledged this 5th day of May, 1922.

CHAS. S. WHEELER and

JOHN F. DAVIS,

Per C.,

Attorneys for Defendant W. J. Loring.

COOKE, FRENCH & STODDARD,

Attorneys for All Other Defendants.

[Endorsed]: No. B-7. In the District Court of the United States, in and for the District of

Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Co., a Corporation, Tungsten Products Company, a Corporation, Mill City Development Company, a Corporation, W. J. Loring, C. W. Poole, R. Nenzel, J. H. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman, Individually, Defendants. Praecipe for Transcript. Filed May 1, 1922. E. O. Patterson, Clerk. Hoyt, Norcross, Thatcher, Woodburn & Henley, Attorneys at Law, Reno National Bank Building, Reno, Nevada. [1182]

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In the District Court of the United States, in and  
for the District of Nevada.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, et al.

Defendants.

**Stipulation Continuing Hearing on Proposed Statement of Facts.**

It is hereby stipulated that the hearing and all proceedings in connection with the citation and order to show cause why decree and order of the above-entitled court in said cause should not be appealed from by the plaintiff, including the hearing on appellees' amendments and proposed amend-

ments and praecipe for additional portions of record, and the settlement of appellant's proposed statement on appeal, be continued from May 25th, 1922, as now set and the same be heard by said Court on June 9th, 1922, at ten o'clock A. M. of that day.

Dated: May 23d, 1922.

HOYT, NORCROSS, THATCHER, WOOD-  
BURN & HENLEY, THATCHER,

Solicitors for Appellant.

CHAS. S. WHEELER and

JOHN F. DAVIS,

Per C.,

Solicitors for W. J. Loring.

COOKE, FRENCH & STODDARD,

Solicitors for All Other Appellees.

[Endorsed]: Original. No. B-7. In the United States District Court in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, et al., Defendants. Stipulation. Filed this 25th day of May, 1922. E. O. Patterson, Clerk. Cooke, French & Stoddard, Reno, Nevada, Attorneys for Appellees. [1183]

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No. B-7.

DAVID TAYLOR,

Complainant,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY et al.

**Minutes of Court—May 25, 1922—Order Continuing Hearing of Statement of Evidence to June 9, 1922.**

Upon motion of Mr. Geo. B. Thatcher, Attorney for the complainant, consent thereto being given by Mr. H. R. Cooke, attorney for the defendants, IT IS ORDERED, that the hearing on and settlement of the statement of evidence be, and the same is hereby, continued to the 9th day of June, 1922, at ten o'clock A. M. [1184]

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In the District Court of the United States, in and  
for the District of Nevada.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING,  
C. W. POOLE, R. NENZEL, H. J. MUR-  
RISH, L. A. FRIEDMAN, C. H. JONES,  
G. K. HINCH, J. T. GOODIN, V. A.  
TWIGG, J. C. HUNTINGTON and LENA  
J. FRIEDMAN, Individually,

Defendants.



**Order Extending Time to and Including June 29, 1922, to File Record and Docket Cause.**

Upon motion of Mr. George B. Thatcher, attorney for the plaintiff herein, and consent thereto being given by Mr. H. R. Cooke, attorney for defendants,—

IT IS ORDERED that plaintiff have to and until June 29th, 1922, within which to perfect and file his record on appeal in the United States Circuit Court of Appeals for the Ninth Circuit.

IT IS FURTHER ORDERED that this order be entered *nunc pro tunc* as of May 30th, 1922.

June 9, 1922.

Done in open court.

E. S. FARRINGTON,  
District Judge.

[Endorsed]: No. B-7. In the District Court of the United States for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, et al., Defendants. Order Extending Time to File Record on Appeal. Filed June 9, 1922. E. O. Patterson, Clerk. By O. E. Benham, Deputy. Hoyt, Norcross, Thatcher, Woodburn & Henley, Attorneys at Law, Reno, Nevada, Attorneys for Plaintiff. [1185]

In the District Court of the United States, in and  
for the District of Nevada.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING,  
C. W. POOLE, R. NENZEL, H. J. MUR-  
RISH, L. A. FRIEDMAN, C. H. JONES,  
G. K. HINCH, J. T. GOODIN, V. A.  
TWIGG, J. C. HUNTINGTON and LENA  
J. FRIEDMAN, Individually,

Defendants.

**Order Extending Time to and Including July 29,  
1922, to File Record and Docket Cause.**

Upon motion of plaintiff, and good cause ap-  
pearing therefor,

IT IS ORDERED that plaintiff have to and  
until July 29, 1922, within which to perfect and file  
his record on appeal in this case.

Done in open court this 29th day of June, 1922.

E. S. FARRINGTON,

District Judge.

[Endorsed]: No. B-7. In the District Court of  
the United States for the District of Nevada.

David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, et al., Defendants. Order Extending Time to File Record on Appeal. Filed June 29, 1922. E. O. Patterson, Clerk. By O. E. Benham, Deputy. Hoyt, Norcross, Thatcher, Woodburn & Henley, Attorneys at Law, Reno, Nevada, Attorneys for Plaintiff. [1186]

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In the District Court of the United States; in and  
for the District of Nevada.

No. B-7—IN EQUITY.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, et al.,  
Defendants.

**Certificate of Clerk U. S. District Court to Trans-  
script of Record.**

United States of America,  
District of Nevada,—ss.

I, E. O. Patterson, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the above-entitled cause.

I further certify that the attached transcript, consisting of 1194 typewritten pages, numbered from 1 to 1194, contains a full, true and correct transcript of the proceedings in said cause and of all pleadings filed therein, together with the endorsements of filing thereon, consisting of four (4) volumes (Volumes 1 and 2 being the Settled and Agreed Statement of Evidence, Volume 3 copies of the Exhibits, and Volume 4 the pleadings in the cause), as set forth in the praecipe filed in said cause and made a part of the transcript attached hereto, as the same appears from the originals [1187] of record and on file in my office as such clerk in the City of Carson, State and District aforesaid. Also with the above-mentioned transcript are Plaintiff's Original Exhibit No. 15 (Mine Report by Howland Bancroft), Plaintiff's Original Exhibit No. 20 (a mine map, Plate 5A), and Defendant's Original Exhibit "Y" (a mine map), not attached but herewith enclosed, it being impracticable to incorporate copies of them in the record.

I further certify that the cost of preparing and certifying to said record, amounting to \$539.60, has been paid to me by Messrs. Hoyt, Norcross, Thatcher, Woodburn & Henley, attorneys for plaintiff in the above-entitled cause.

And I further certify that the original assignment of errors and the original Citation, issued in this cause, are hereto attached.

WITNESS my hand and the seal of said United States District Court this 26th day of July, 1922.

[Seal] E. O. PATTERSON,  
Clerk, U. S. District Court, District of Nevada.  
[1188]

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In the United States District Court, in and for  
the District of Nevada.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COMPANY,  
a Corporation, W. J. LORING, C. W.  
POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, G. K.  
HINCH, J. T. GOODIN, V. A. TWIGG,  
J. C. HUNTINGTON and LENA J. FRIED-  
MAN, Individually,

Defendants.

**Citation.**

United States of America to Nevada Humboldt  
Tungsten Mines Company, a Corporation, Tung-  
sten Products Company, a Corporation, Mill City  
Development Company, a Corporation, W. J.  
Loring, C. W. Poole, R. Nenzel, H. J. Murrish,



L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman, Individually, GREETING:

You are hereby notified that in a certain case in equity in the United States District Court in and for the District of Nevada, wherein David Taylor is plaintiff and Nevada Humboldt Tungsten Mines Company, a corporation, Tungsten Products Company, a corporation, Mill City Development Company, a corporation, W. J. Loring, C. W. Poole, R. Nenzel, H. J. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman, are defendants, [1189] an appeal has been allowed the plaintiff therein to the Circuit Court of Appeals of the United States for the 9th Circuit. You are hereby cited and admonished to be and appear in said Court, at San Francisco, State of California, thirty (30) days after the date of this citation, to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS the Honorable E. S. FARRINGTON, Judge of the United States District Court for the District of Nevada, this 1st day of May, 1922.

[Seal]

E. S. FARRINGTON,  
United States District Judge.

Service by copy of the above citation is hereby acknowledged, this 5th day of May, 1922.

CHAS. S. WHEELER and

JOHN F. DAVIS,

Attorneys for Defendant W. J. Loring.

COOKE, FRENCH & STODDARD,

Attorneys for All Other Defendants. [1190]

[Endorsed]: No. B-7. In the United States District Court, in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, etc., et al., Defendant. Citation. Filed this 6th day of May, 1922. E. O. Patterson, Clerk. ———, Deputy.

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In the District Court of the United States, in and for the District of Nevada.

B-7—IN EQUITY.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES COMPANY, a Corporation, TUNGSTEN PRODUCTS COMPANY, a Corporation, MILL CITY DEVELOPMENT COMPANY, a Corporation, W. J. LORING, C. W. POOLE, R. NENZEL, H. J. MURRISH, L. A. FRIEDMAN, C. H. JONES, G. K. HINCH, J. T. GOODIN, V. A. TWIGG, J. C. HUNTINGTON and LENA J. FRIEDMAN, Individually,

Defendants.

### **Assignment of Errors.**

Comes now the plaintiff in the above-entitled action and files the following assignment of errors upon which he relies in the prosecution of his appeal of the above-entitled cause from the decree made by this Honorable Court on the 13th day of September, 1921:

#### **I.**

That the Court erred in making and entering its final decree in favor of the defendants and against the plaintiff and that said decree is not supported by and is contrary to the evidence, and is against law.

#### **II.**

That the Court erred in failing and refusing to enter a decree in favor of the plaintiff, awarding to the plaintiff sixty-two per cent (62%) of the stock of the Nevada Humboldt Tungsten Mines Company, sixty-two per cent (62%) of the stock of [1191] the Tungsten Products Company and sixty-two per cent (62%) of the stock of the Mill City Development Company, and the finding of the Court and the decree entered pursuant thereto against the plaintiff and in favor of the defendants is contrary to the evidence and not supported thereby, and is against law.

#### **III.**

That the Court erred in finding that the plaintiff had failed to establish by a fair preponderance of the evidence, that the defendants, Poole, Mur-

rish, Nenzel and Friedman, for the purpose of inducing plaintiff to undertake the contract, had falsely and fraudulently, by means of telegrams and letters, informed plaintiff that further and new development had been carried on within the mines and mining claims of the Nevada Humboldt Tungsten Mines Company which had developed and placed in sight, blocked out and made ready for mining, large quantities of scheelite ore of commercial value and capable of being concentrated, the concentrates so returned being of great value.

#### IV.

That the Court erred in finding that the representations made by the defendants through Nenzel, by telegrams of date of Feb. 14, 1919 (Exhibit 2), of Feb. 24, 1919 (Exhibit 3), telegram of Nenzel of March 12, 1919 (Exhibit 8), letter of Nenzel of March 21, 1919 (Exhibit 9), telegram of Friedman of March 25, 1919 (Exhibit 10), letter of Nenzel of March 27, 1919 (Exhibit 13), were true and that by said telegrams or letters or any of the letters or telegrams made prior to the execution of the contract of April 2, 1919 (Exhibit 16), the plaintiff was not misled and said finding was contrary to the evidence and is not supported by the evidence, and is against law.

#### V.

That the Court erred in finding that plaintiff had failed [1192] to establish by a fair preponderance of the evidence that Poole, Murrish or Nenzel, had, at Denver, falsely and fraudulently represented to plaintiff that since the ex-

amination of the mining claims of the Nevada Humboldt Tungsten Mines Company by Bancroft in January, additional ore had been blocked out and there had been made ready for mining over sixty thousand (60,000) tons of scheelite ore carrying an average of one hundred and seventy-five per cent (175%) tungstic acid and in finding that plaintiff was not misled or deceived by the defendants, and the same is contrary to the evidence and is not supported by the evidence and is against law.

VI.

That the Court erred in making the following finding: "I find the evidence is not sufficient to show that the alleged false representations as to tonnage in the mine were made; and even if there were such representations, Taylor was not thereby induced to enter into the contract of April 2d or to attempt to perform its conditions." Said finding is contrary to the evidence and is not supported by the evidence, and is against law.

VII.

That the Court erred in its opinion and decision filed Oct. 10, 1921 and the findings therein and in the whole thereof and in the conclusions therefrom, and that said opinion upon which the decree was entered is contrary to the evidence and is not supported by the evidence, and is against law.

VIII.

That the Court erred in overruling and denying plaintiff's petition for rehearing.

IX.

That the Court erred in finding that plaintiff



had not [1193] acted and relied upon the representations made by the defendants and said finding is contrary to the evidence and is not supported by the evidence and is against law.

NORCROSS, THATCHER & WOOD-  
BURN,

Attorneys for Plaintiff. [1194]

[Endorsed]: No. B-7. In the District Court of the United States, in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, Tungsten Products Company, a Corporation, W. J. Loring, C. W. Poole, R. Nenzel, J. H. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman, Individually. Assignment of Errors. Filed May 1, 1922. E. O. Patterson, Clerk.

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[Endorsed]: No. 3902. United States Circuit Court of Appeals for the Ninth Circuit. David Taylor, Appellant, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, Tungsten Products Company, a Corporation, Mill City Development Company, a Corporation, W. J. Loring, C. W. Poole, R. Nenzel, H. J. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman, Individually, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Nevada.

Filed July 28, 1922.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

**Plaintiff's Exhibit No. 15.**

[Endorsed]: B-7. Plffs. 15. U. S. District Court, District of Nevada. David Taylor vs. Nevada-Humboldt Tungsten Mines et al. Filed Sept. 14, 1920. T. J. Edwards, Clerk. By E. O. Patterson, Deputy.

No. 3902. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 28, 1922. F. D. Monckton, Clerk.

**REPORT**

On a Preliminary Investigation of the  
NEVADA-HUMBOLDT TUNGSTEN MINE  
At Tungsten, Humboldt County, Nevada  
By Howland Bancroft.  
Denver, Colorado, February 15, 1919.

**REPORT**

On a Preliminary Investigation of the  
NEVADA-HUMBOLDT TUNGSTEN MINE  
At Tungsten, Humboldt County, Nevada.

**TABLE OF CONTENTS.**

Summary of Results of Examination .....Pages 1 to 3.  
General Statement .....Pages 1.  
Tonnage and Value of Indicated  
Ore .....Pages 1.  
Conclusions .....Pages 2.

Recommendations .....	Pages	3.
Description of Property .....	Pages	3 to 10.
General .....	Pages	3.
Holdings .....	Pages	4.
Topography .....	Pages	4.
Geology .....	Pages	4.
History and Production .....	Pages	4.
Equipment .....	Pages	5.
Development .....	Pages	5.
The Ore Deposit .....	Pages	6 & 7.
General Description .....	Pages	6.
Methods of Sampling .....	Pages	6.
Tonnage and Average Grade ....	Pages	7.
Costs .....	Pages	7.
Profits .....	Pages	8.
The Market Price of Tungsten...	Pages	8.
Present Condition of Mine .....	Pages	9.
Proposed Development Program ....	Pages	10.
Plate No. 1. Map of a portion of Humboldt County, Nevada, Showing the Loca- tion of the Nevada-Humboldt Tung- sten Mine.		
Plate No. 2. Map Showing Ownership of Land in the Vicinity of the Nevada-Hum- boldt Tungsten Mine.		
Plate No. 3. Geological Map of the Mill City Tung- sten District, Mill City, Nevada.		
Plate No. 4. Topography and Surface Map, Ne- vada-Humboldt Tungsten Mines Company Area.		

Plate No. 5. Assay Map. Section on Plane of Vein, Nevada-Humboldt Tungsten Mine.

Plate No. 6. Plan of Levels of the Nevada-Humboldt Tungsten Mine.

Appendix "A." Flow Sheet of 100 Ton Tungsten Concentrator Erected. Property of Tungsten Products Company, Owned by Nevada-Humboldt Tungsten Mines Company Interests.

Appendix "B." Concentrates Sold. From a Statement Submitted by Nevada-Humboldt Tungsten Mines Company.

Appendix "C." Shipping Concentrates on Hand. From a Statement Submitted by Nevada-Humboldt Tungsten Mines Company.

Appendix "D." Sulphide Concentrates on Hand. From a Statement Submitted by the Nevada-Humboldt Tungsten Mines Company.

## SUMMARY OF RESULTS OF EXAMINATION.

GENERAL STATEMENT: The mining property of the Nevada-Humboldt Tungsten Mines Company is under option to Mr. David Taylor. This option expires July 16, 1919. The past production of this property and a preliminary examination of the mine made by the writer of this report last November, indicated a promising commercial prop-

osition. The present investigation was made to determine the actual grade of ore in the developed portions of the mine and was undertaken with the knowledge that only a small tonnage of ore was actually exposed. Naturally, if the grade of this tonnage proved too low to represent a commercial proposition, no further interest would attach to the option. Consequently, the examination became in reality a preliminary investigation. The report, however, represents a detailed description of the Nevada-Humboldt Tungsten Mine as it appeared at the time of the examination, namely, from January 17th to 27th, 1919.

**TONNAGE AND VALUE OF INDICATED ORE:** There is no ore developed on four sides. The ore which is summarized in this report, as indicated, is not fully developed but has been exposed on one, two or three sides. A detailed summary of indicated ore will be found on page 7 of this report.

The investigation disclosed 8111 tons of ore which is commercial with tungsten selling at \$6.00 a unit. The average tenor of this ore is 1.75% tungsten trioxide ( $\text{WO}_3$ ). This ore, therefore, contains 141.93 tons  $\text{WO}_3$ . of which 80% is recoverable, or 113.544 tons  $\text{WO}_3$ . which equals 11354.4 units  $\text{WO}_3$ . The total cost of mining and milling this tonnage at \$5.00 per ton will be \$40,555.00. Consequently the value of this indicated tonnage is as follows:



Market Price Per Unit	Gross Value of Indicated Ore	Net Value of Indicated Ore
\$ 6.00 .....	\$ 68,126 .....	\$ 27,571
8.00 .....	90,835 .....	50,280
10.00 .....	113,544 .....	72,989
12.00 .....	136,252 .....	95,697
14.00 .....	158,961 .....	118,406
16.00 .....	181,670 .....	141,115
13.00- .....	.....	107,052

Of this tonnage\*, 60% containing 60% of the total tungsten contents of the indicated ore is exposed on two sides; 25% containing 27.4+% of the total tungsten content is exposed on two sides and partially exposed on a third side; and the balance, or 15%, containing 12.4+% of the total tungsten content of the indicated ore is exposed on one side (See page 7 this report for tabulated statement of indicated ore calculated from the assay plan, Plate 5).

An additional tonnage, not sampled, is exposed above number 1 level. This ore was not sampled in view of the probability of its being extracted and milled during the life of the option. Furthermore, there is an additional tonnage in the blocks designated as indicated ore, the cubic contents and assay value of which cannot be definitely calculated because of the fact that in but few instances could samples be cut from wall to wall.

## CONCLUSIONS:

1. From many viewpoints the property is one of the most favorably situated tungsten mines in the United States. It is one of the few containing an

ore body which is commercial under pre-war market prices for this product and present high priced labor, supply and material conditions. At a market price of \$6.25 per unit, treating 100 tons of ore per day with an 80% recovery, tungsten ore from this ore body will pay expenses if it runs 1%  $\text{WO}_3$ . (As previously stated, the average tenor of the 8111 tons of indicated ore is 1.75%  $\text{WO}_3$ . The average market price of tungsten trioxide for 10 years prior to the war was \$6.93 per unit.)

2. The ore values occur in apparently well defined shoots which have a remarkably even value, as indicated by the assay plan, and, generally speaking, the mineralization is decidedly uniform notwithstanding the fact that the ore body belongs to a class of erratic igneous metamorphic deposits.

3. The development program outlined (See Plate 5) and in progress, if continued in ore, should put in sight during the option a sufficient amount of ore to make the property an attractive commercial proposition even though the market price of tungsten trioxide reaches a pre-war level.

#### RECOMMENDATIONS:

1. That the progress of the development program be systematically followed, and if feasible that a detailed sampling of the new workings be arranged to follow closely the development.

2. A fraction claim located in the center of the Company holdings and owned by outside interests should be acquired at a very reasonable figure in the

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\*Throughout this report, short tons of 2000 lbs. are used, and a unit represents 20 lbs.  $\text{WO}_3$ .

event it is decided to exercise the option. In any event, the Company should obtain an option on this ground in the near future, as such an option may now be obtained at a low figure.

### DESCRIPTION OF PROPERTY.

GENERAL: The location, claims, topography, geology, underground workings and results of sampling are shown in detail on Plates 1 to 6, and a careful study of these plates will materially assist in a more rapid and thorough understanding of the subject matter of this report.

The property is located about nine miles by wagon road north of Mill City, a station on the Southern Pacific Railroad (See Plate 1). Water is pumped about four miles to the property from a well located half a mile west of the Humboldt River, and an adequate supply for all milling and camp purposes appears to be assured. There is no timber on the ground and this must be shipped in. As the mine requires very little timbering this item has not become a serious one. There is no fuel near the property and this also is shipped in. Power is obtained from the Nevada Valley's Power Company, which furnishes electric power for the mine and mill, and for lighting the camp.

HOLDINGS: There are four lode claims, White Rock, Sky High, Gross No. 2 and Gross No. 3, which are held by location. There are also 80 acres in the S. E.  $\frac{1}{4}$  of Sec. 27 T. 34 N., R. 34 E., Mt. Diablo Base and Meridian, which were purchased outright from the Central Pacific Company and for which the Nevada-Humboldt Tungsten Mines Com-

pany holds deed. These 80 acres are patented, bearing date December 14, 1905 (See Plate 2).

**TOPOGRAPHY:** The workings are located in low rounded and gently sloping hills which form outliners to the east of the Eugene Mountains. The elevation of the top of these hills is about 1000 feet above the Humboldt River some four miles to the east. The hills are covered by a few inches to several feet of detrital material and rock exposures are not numerous. Consequently, the location of the deposits on the surface has been determined in a large measure by trenching (See Plates 1 and 4).

**GEOLOGY:** The rocks in the immediate vicinity of the deposit consist of a sedimentary series of shales, slates and schists, with intercalated thin bands or lenses of limestone, which are locally mar-maraceous and in places garnetized. These rocks have been intruded by granitic masses which have tilted the sediments at steep angles, and in places dikes from the intrusive masses extend into and cut across the sedimentary series, as evidenced in the underground workings of the mine. Plate 3, a carefully and accurately prepared geological map furnished by the Company, clearly illustrates the areal geology of the district.

**HISTORY:** Prospectors and lessees had done an appreciable amount of work upon the property prior to the operations of this Company. This resulted in opening up some surface showings, the total production from which, however, has been of no real importance.

The mining company was formed early in 1918 and until the end of August of the same year literally mined ore from the grass roots down, which material was transported by wagon to Mill City, thence shipped by railroad to Toulon where it was concentrated. These operations resulted in the production of over 7700 tons of ore which had an estimated average grade of 2.5%  $\text{WO}_3$ , from which concentrates containing over 235,000 lbs. of  $\text{WO}_3$  were obtained and sold for over \$270,000.00—a remarkably good record. Since November, ore from the mine has been treated in the company mill, a modern 100-ton concentrator, which commenced operations in the late fall and which treated up to January 13th, 1919, some 3456 tons of ore, from which concentrates were produced containing 83,558 lbs.  $\text{WO}_3$  (See Appendices “B,” “C” and “D,” statements of production furnished by the Company).

**EQUIPMENT:** The mine is equipped with an electric hoist and skip adequate for all hoisting operations which seem probable in connection with this deposit. There is also a compressor plant adequate for present requirements. Mine cars, track and a well stocked store room form a part of the mine equipment. The engine house, office, store room and various mine buildings and bunk houses are substantially constructed. The 100-ton tungsten mill built on the property by the Tungsten Products Company, owned by the same interests, is thoroughly modern and has treated a sufficient



amount of material to demonstrate its adaptability to the type of ore found in this deposit.

A flow sheet of the mill will be found in Appendix "A," which flow sheet was supplied by the constructing engineers who designed and built the plant. While the rated capacity of this mill is 100 tons, there seems little doubt that it will readily treat upwards of 120 tons of material per day.

DEVELOPMENT: The principal development on the property is a shaft on the vein, which at the time of the investigation was 240 feet deep on the incline, from which two levels have been driven, which are shown in detail on Plate 6 and which comprise over 1000 feet of drifting on the ore zone. Four short adit tunnels totaling over 500 feet of work, have been driven on or near this ore zone above the level of the shaft, some surface trenching has been accomplished and a 50 foot shaft has been sunk on the Carlson vein some 500 feet to the northwest of the S. P. shaft. However, the developments other than the main workings are simply indicative of ore occurrences.

### THE ORE DEPOSIT.

The ore deposit represents a shear zone in the sedimentary series which has a northeast-southwest strike and a steep dip to the northwest. This shear zone throughout a large portion, occupies the same horizon as the marmaraceous limestone lenses exposed in the main workings, or is just to the northwest. Mineralizing solutions, probably emanations from the intrusive granite, have permeated the sedimentary series and impregnated the same with

pyrite, and on encountering the limestone, a receptive medium, have deposited tungsten in the form of scheelite in gangue of brecciated country rock, quartz, garnet, epidote and pyrite. The ore bearing zone has been proved by developments on this and an adjoining property to extend over a strike distance of more than 2000 feet, which zone of course is not continuously mineralized, although ore shoots have been definitely proved to exist in places throughout its course. The average stoping width as demonstrated underground, is from  $4\frac{1}{2}$  to 5 feet, and a considerable amount of ore has been left on the walls. The deepest working is over 500 feet below the highest outcrop of the ore zone on this property. The depth of the zone of oxidation has not been definitely determined and its boundaries are very irregular.

The ore body was sampled, as indicated on Plate 5, on both the first and second levels and in the shaft. On the levels 10 foot intervals were used between samples, and in the shaft 5 and  $7\frac{1}{2}$  foot intervals. The samples were cut with the aid of a small air drill, the spoil being caught in large canvas bags. The samples varied in weight from 20 to 40 lbs., the average being about 30 lbs. Trenches ranging in width from 3 to 4 inches and in depth from 2 to 3 inches, were cut across the ore body. In but few instances was it possible to obtain samples extending from wall to wall, and there is no doubt that an additional 2000 to 3000 tons of ore remains unsampled and consequently cannot be included in the indicated ore tabulation. The sam-

ples were taken to a laboratory where they were crushed in a Braun crusher and quartered in a Braun sampling machine. Samples in parcels weighing about 5 lbs. were shipped to Mr. Hugh Watts at Boulder with instructions to crush all of the material to pass 30 mesh before further quartering. The assaying was done by Mr. Watts at Boulder. Of a total of 97 samples taken in the main workings, all but four showed some tungsten content, and only 37 were non-commercial under the conditions existing at this property and assuming a market price of \$6.25 a unit. The average tungsten content of the indicated ore is 1.75% and this ore represents a total of 8111 tons as follows:

		Avg. $\text{WO}_3$	
		Tons	Contents
Block A	933	x 1.46=	1362.18
"	B 277	x 1.47=	407.19
"	C 2029	x 1.92=	3895.68
"	D 2535	x 1.88=	4765.80
"	E 2337	x 1.61=	3762.25
		<hr/>	
Total	8111		14193.10 or an average of 1.75% $\text{WO}_3$

**COSTS:** The total costs of mining and milling as determined by operations at the property, have been \$2.36 and \$1.50 respectively. This is of course subject to some variation. As the figures submitted include no item for general expenses, \$1.04 has been added, making the total cost of mining and milling \$5.00 per ton, which figure is adequate. In other words, on an 80% recovery basis, mining 100 tons

a day and milling 120 tons per day 85% of the time, with tungsten at \$6.25 a unit, ore which runs 1%  $WO_3$  will pay expenses.

PROFITS: Without a tungsten market it is impossible to specify profits to be expected from operations. One method of attacking this problem is by tabulating the profits to be derived from mining and milling the 8111 tons of indicated ore, using various market prices from \$6.00 to \$16.00 per unit:

Market Price Per Unit	Gross Value of Indicated Ore	Net Value of Indicated Ore
\$ 6.00 .....	\$ 68,126 .....	\$ 27,571
8.00 .....	90,835 .....	50,280
10.00 .....	113,544 .....	72,989
12.00 .....	136,252 .....	95,697
14.00 .....	158,961 .....	118,406
16.00 .....	181,670 .....	141,115

It is impossible to give definite information relative to the probable market price for tungsten, and the best that can be done is to base a judgment of the future on the record of the past. The average price of tungsten from 1908 to 1917 inclusive, in the United States, in tons of 2000 lbs. of 60%  $WO_3$  contents, was \$1907 per ton. This represents a production of 24,221 tons having a value of \$46,201,-570. Leaving out the production and value of the 1916 output, there remains 16,752 tons having a value of \$12,114,110 or an average price of \$723 per ton for nine years. Including the 1916 output at the average sale price for nine years, there was a production of 24,221 tons with a value of \$17,514,-

197. The pre-war record in the United States from 1905 to 1914 inclusive, shows a production of 12,478 tons having a value of \$5,202,169 or an average price of \$416 per ton for ten years prior to the war, or \$6.93 per unit.

The property under discussion, with the costs indicated in the preceding paragraph, can produce a better grade of concentrates for \$277.77 per ton, or \$4.27 per unit on a 65%  $\text{WO}_3$  basis. In other words, the minimum profits to be expected are \$172.68 per ton of 65%  $\text{WO}_3$  concentrates, or \$2.66 per unit.

In view of the fact that the war requirements have stimulated the consumption of tungsten in industries which may be classed as peace industries, it hardly seems reasonable to expect that the average pre-war price above stated will hold in the future. On the other hand, war consumption stimulated the production in all countries in the world, with the result that a very large tonnage of material can be shipped to the United States probably at a cost not to exceed \$8.00 to \$10.00 a unit. Consequently, the future market price for tungsten without a protective tariff may be expected to be in the neighborhood of \$10.00 a unit.

Another viewpoint is the possibility and even the probability of so educating the manufacturers of tungsten products and the consumers of various types of steel to the beneficial qualities of tungsten that the peace requirements will more than absorb the domestic production, in which event a protective tariff would not be necessary and the price of tung-



sten should be considerably above the pre-war average.

#### THE PRESENT CONDITION OF THE MINE:

The present condition of the mine is clearly illustrated by Plate 5, which is an assay map. It will be seen that the ore zone to the northeast of the main stope above the first level is noncommercial under existing conditions, assuming a pre-war price for tungsten. Likewise, between the stopes southeast of the shaft on the first level, over an interval of 65 feet, the ground is noncommercial. On the second level, to the northeast, the face is in low grade ore, whereas the last 75 feet of the drift to the southwest is noncommercial. However, judging from the trend of the ore shoots, it seems likely that a continuation of this level will develop commercial ore within a few feet.

No. 3 level, which is just started, is in good ore, as is also the bottom of the shaft.

The Carlson vein, from which one sample was taken 35 feet below the collar of the shaft, while apparently a strong vein, does not seem to have a very high tungsten content. However, the explorations on this vein are so meager that they afford little or no data from which to draw any conclusions regarding the commercial possibilities of this vein.

**PROPOSED DEVELOPMENT PROGRAM:** A development program has been proposed and has been accepted by the management, which contemplates sinking the shaft an additional 360 feet, continuing level No. 2, driving levels 3, 4, 5 and 6, 380

feet to the southwest and 250 feet to the northeast, and connecting these levels by raises.

If this development continues in ore, the property should become an attractive commercial proposition during the life of the option, even assuming a pre-war market price for tungsten.

HOWLAND BANCROFT.

Denver, Colorado, February 15, 1919.

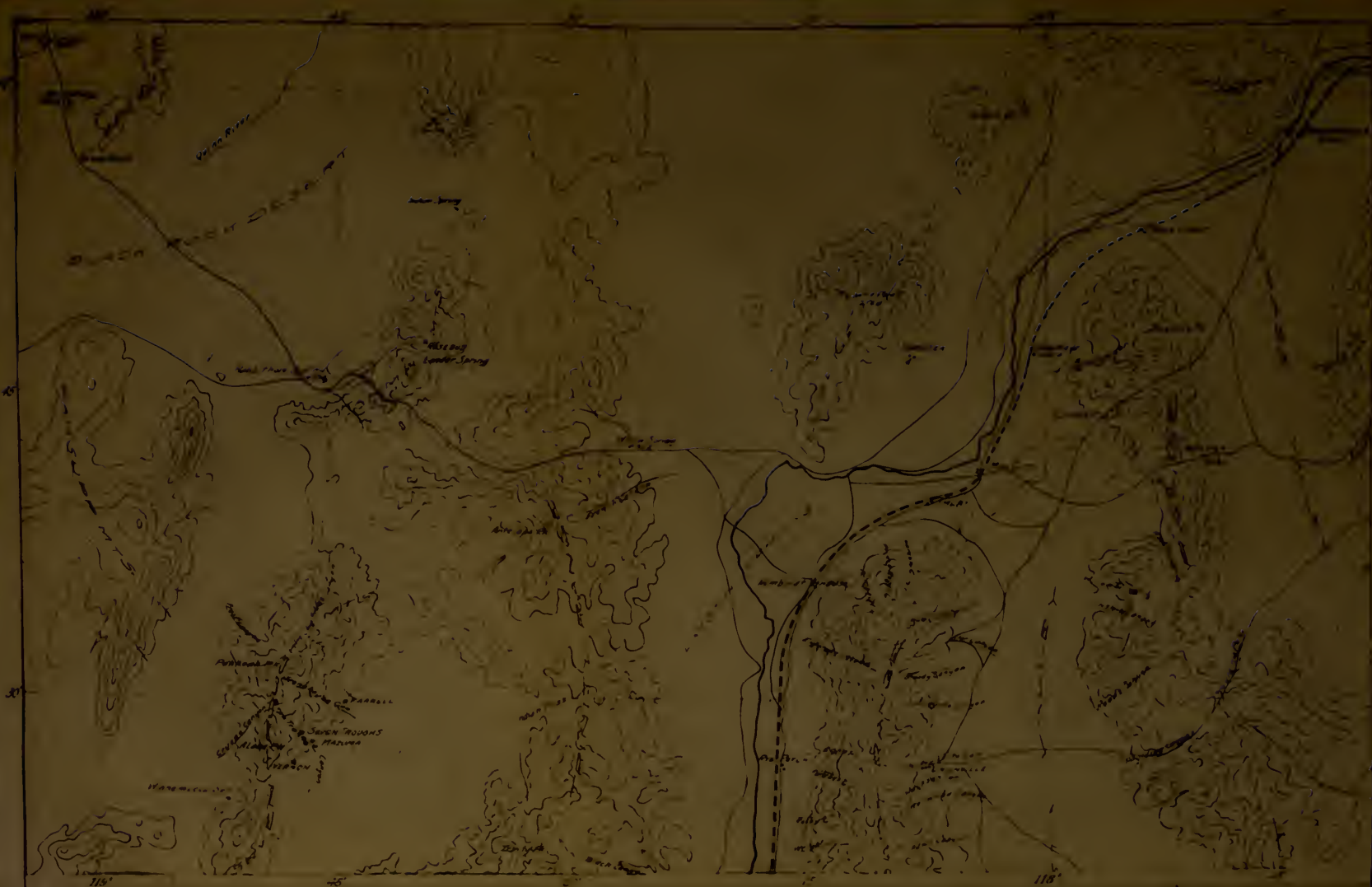


PLATE NO. I  
 MAP OF A PORTION OF HUMBOLDT COUNTY, NEVADA  
 SHOWING THE LOCATION OF  
 THE NEVADA-HUMBOLDT TUNGSTEN MINE  
 (MAP FINISHED BY THE COMPANY)  
 TO ACCOMPANY THE REPORT OF HOWLAND BANCROFT FEBRUARY 15<sup>th</sup>, 1907

SCALE OF MILES  
 0 5 10





TOWN 36N										TOWN 37N									
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40
41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60
61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80
81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

TOWN 38N										TOWN 39N									
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40
41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60
61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80
81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

Enclosed Sections - U.S. Government Land.

Yellow - Central Pacific Railway.

See Section 1, Town 36N, Range 12E, for location of the Nevada-Humboldt Tunstun Mine.

Section 1, Town 36N, Range 12E, for location of the Nevada-Humboldt Tunstun Mine.

Section 1, Town 36N, Range 12E, for location of the Nevada-Humboldt Tunstun Mine.

Section 1, Town 36N, Range 12E, for location of the Nevada-Humboldt Tunstun Mine.

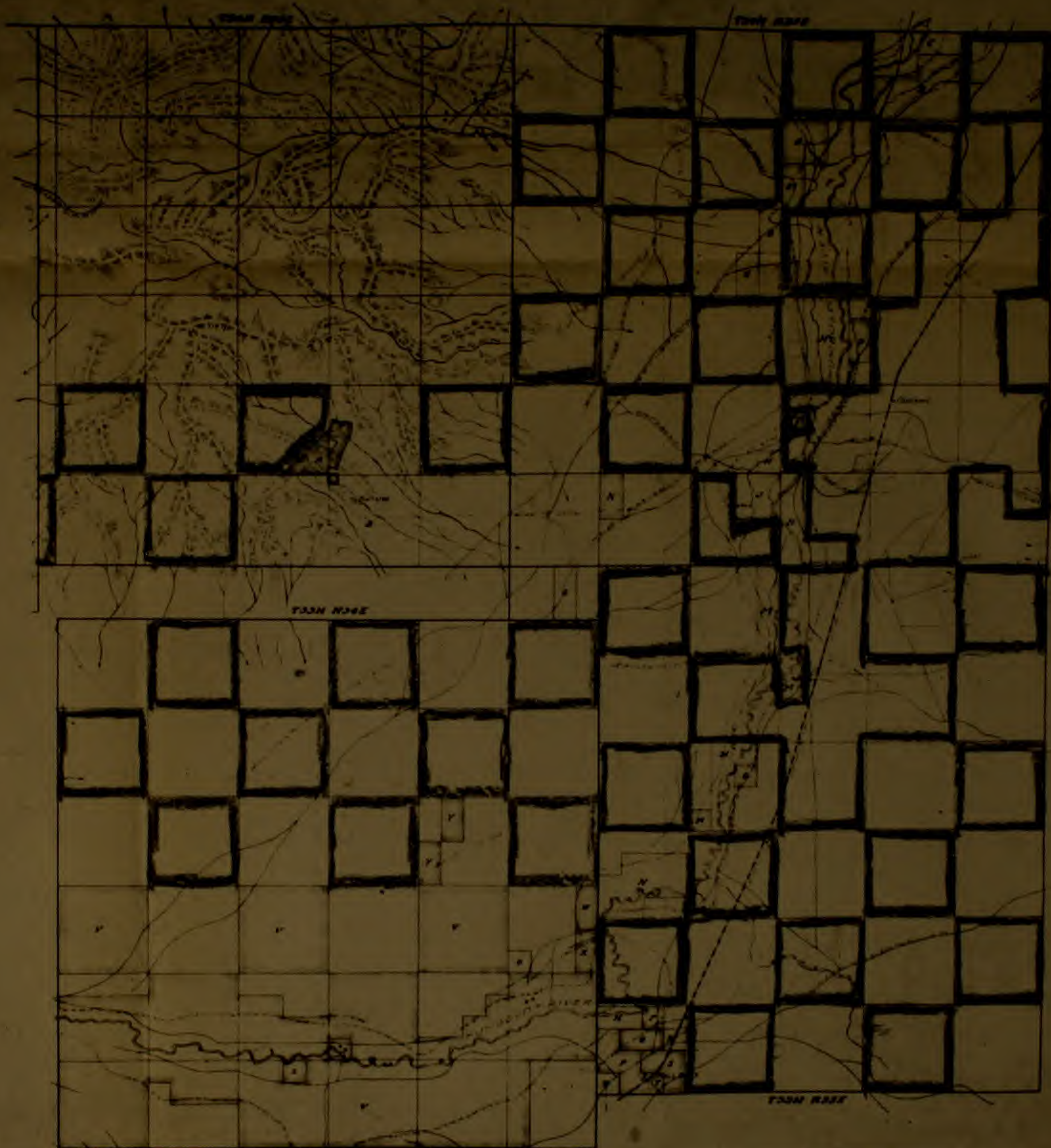


PLATE NO.2  
MAP SHOWING OWNERSHIP OF LAND  
IN THE VICINITY OF  
THE NEVADA-HUMBOLDT TUNSTEN MINE  
(MAP FURNISHED BY THE COMPANY)  
TO ACCOMPANY THE REPORT OF HOWLAND SANCROFT FEBRUARY 15, 1919  
SCALE OF MILES





PLATE NO. 3  
 GEOLOGICAL MAP  
 MILL CITY TUNGSTEN DISTRICT  
 MILL CITY, NEVADA

1:25,000





PLATE NO. 4  
TOPOGRAPHY AND SURFACE MAP  
NEVADA-HUMBOLDT TUNGSTEN MINES CO. AREA  
(MAP FURNISHED BY THE COMPANY)  
TO ACCOMPANY THE REPORT OF HOWLAND BANCROFT FEBRUARY 15<sup>TH</sup>, 1919

SCALE IN FEET  
0 100 200 300 400 500 600  
CONTOUR INTERVAL 25 FEET

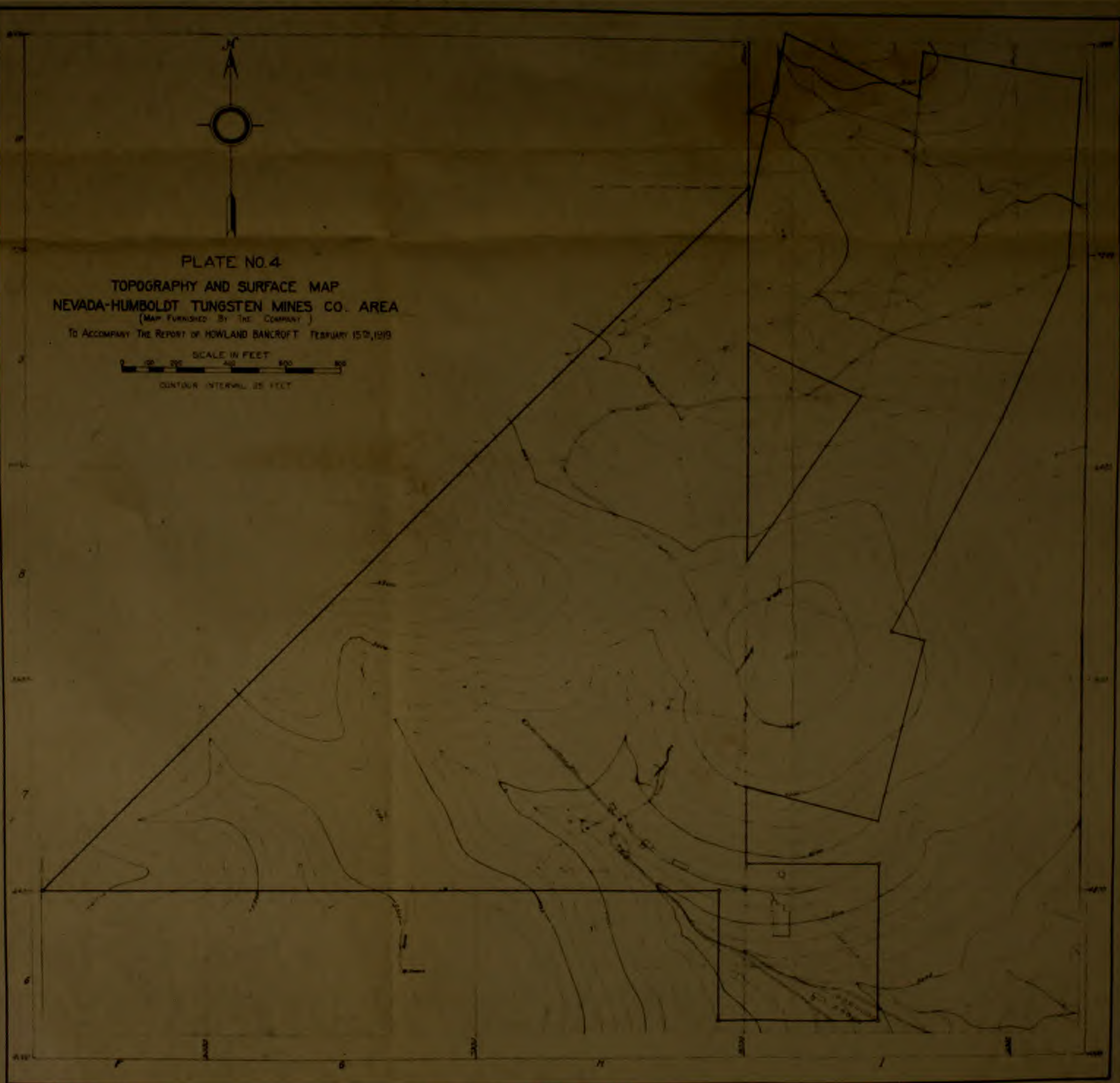




PLATE NO. 5  
SECTION ON PLANE OF VEIN  
NEVADA-HUMBOLDT TUNGSTEN MINE

(Original Map Turned In By "X" Company)

Surveyed The Record Of HOWLAND SANDOZ February 1910

SCALE IN FEET

LEGEND —

• 1/20 SAMPLE SIGN

• 1/20 2/5 W. S.

SOLID LINES - WORKINGS

CROSS-HATCHING - STOPPED AREAS

DASH LINES - PROPOSED DEVELOPMENTS

NE ←

→ SW

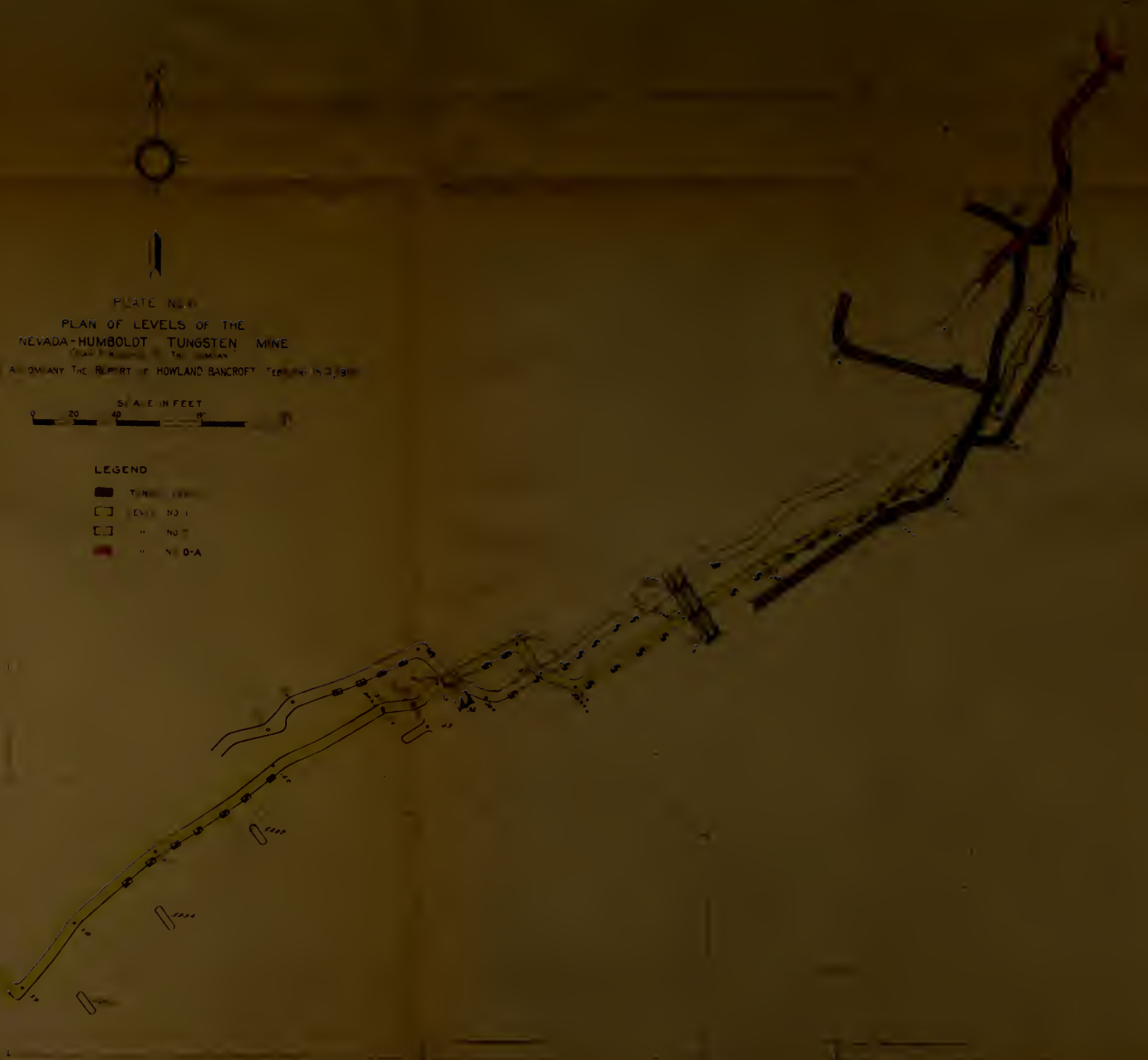
PLATE NO. 4  
 PLAN OF LEVELS OF THE  
 NEVADA-HUMBOLDT TUNGSTEN MINE

FROM A COMPANY THE REPORT OF HOWLAND BANCROFT FEBRUARY 1904

SCALE IN FEET  
 0 20 40 60

LEGEND

- TUNNEL
- LEVEL NO. 1
- " NO. 2
- " NO. 3



APPENDIX "A."

TUNGSTEN PRODUCTS CO.

FLOW SHEET FOR 100 TON TUNGSTEN  
CONCENTRATOR.

(For the Nevada Humboldt Tungsten Mine.)

1. One Ton Ore Cars from Mine to No. 2.
2. 16'x16'x16' Ore Bin—Capacity 200 Tons.  
100 Tons will run out. To No. 3.
3. 1—24"x30" Double Rack and Pinion Ore Bin  
Gate. To No. 4.
4. 1—24"x60" Grizzly  $5/8$ "x $21/2$ " taper bars, 1"  
space placed on 45° incline.  
Oversize to No. 5.  
Undersize to No. 6.
5. 20"x10" Type "B" Allis-Chalmers Blake  
Crusher—250 R. P. M. To No. 6.
6. 12" Belt Conveyor—26' centers. Belt speed  
280 ft. per min. Head Driven by Bevel  
Gears and Chain from Boot Pulley on No. 7.  
To No. 7.
7. Belt and Bucket Elevator, 46 ft. centers. Belt  
14" by 6 ply. Buckets 12"x $71/2$ ", Style "A,"  
17" centers. Belt speed 300 ft. per min.  
Geared Head with T. & L. Pulleys. To  
No. 8.
8. 1—36"x6' Revolving Trommel, screen shell  
 $3/16$ " steel with  $7/16$ " dia. perforations.  
Speed 19 R. P. M. Slope 1" per foot. T. &  
L. Pulleys.  
Oversize to No. 9.  
Undersize to No. 10.

9. 36"x16" Allis-Chalmers Style "B" Crushing Roll set to  $\frac{3}{8}$ ". To No. 6.
  10. 1—16' inside dia. by 20 ft. stave Oregon Pine Ore Bin. Staves of 4" and bottom of 6" material. 27— $\frac{5}{8}$ " hoops. Capacity 200 tons. 100 tons will run out. Equipped with 18"x24" R. & P. Ore Bin Gate fastened to face of bin by hoops. To No. 11.
  11. 1—Right hand Belt Driven Hamill Ore Feeder with T. & L. Pulleys. To No. 12.
  12. Feed box for Elevator. To No. 13.
  13. Belt and Bucket Elevator, 55 ft. centers. 14" by 6 ply Belt. Buckets 12"x7 $\frac{1}{2}$ ", Style "A." 17" centers. Belt speed 300 ft. per min. Geared Head with T. & L. Pulleys. To No. 14.
  14. Distributing Feed Box to Duplex Trommel. To No. 15.
- Flow Sheet for 100 Ton Concentrator, Sheet No. 2.
15. 36"x5'-10" Standard Duplex Style "C" Revolving Trommel equipped with #23 Tyler Ton Cap Screen—3 m. m. opening. Slope  $\frac{3}{4}$ " per foot. T. & L. Pulleys, Bevel Gears, and Jaw Clutches.  
Oversize to No. 16.  
Undersize to No. 18.
  16. 24"x24"x24" Distributing Box to No. 7 or to No. 21.
  17. 30"x14" Allis-Chalmers Style "B" Crushing Rolls, 100 R. P. M. To No. 12.



18. 24" Duplex Callow Screen with 14 mesh Phosphor Bronze Ton Cap Belts. Belt speed 50 ft. per min.  
Oversize to No. 19.  
Undersize to No. 22.
19. 12"x12" Richards Single Compartment Pulsator Jig with screen for handling minus 3 m. m. plus 14 mesh product.  
Concentrate to No. 36.  
Tailing to No. 20.
20. 4 foot Callow Sloughing-off Cone.  
Spigot Discharge to No. 21 or No. 35.  
Overflow to No. 46.
21. 30"x14" Allis-Chalmers Style "B" Crushing Roll, 110 R. P. M. To No. 12.
22. 24" Duplex Callow Screen with 20 mesh Phosphor Bronze Ton Cap Belts. Belt Speed 50 ft. per min.  
Oversize to No. 25.  
Undersize to No. 23.
23. Simplex Callow Screen with 30 mesh Phosphor Bronze Ton Cap Belt. Belt speed 75 ft. per min.  
Oversize to No. 26.  
Undersize to No. 24.
24. Simplex Callow Screen with 48 mesh Phosphor Bronze Ton Cap Belt. Belt speed 75 ft. per min.  
Oversize to No. 27.  
Undersize to No. 28.
25. 12"x12"x48" Distributing Box to two No. 30.
26. 12"x12"x48" Distributing Box to two No. 30.

27. 12"x12"x48" Distributing Box to one No. 31.
28. 3—8' Callow Settling Cones.  
Gooseneck Discharge to No. 29.  
Overflow to No. 46.
29. 12"x12"x48" Distributing Box to three No. 31.  
Flow Sheet for 100 Ton Concentrator, Sheet No. 3.
30. 4—Deister Overstrom Sand Finishing Tables,  
equipped with Overstrom Head Motions.  
Concentrates to No. 36 and No. 37.  
Middling to No. 32.  
Tailing to No. 46.
31. 4—Deister Overstrom Sand Finishing Tables,  
equipped with Deister Head Motions.  
Concentrates to No. 37 and No. 38.  
Middling to No. 32.  
Tailings to No. 46.
32. Feed Box for Sand Pump. To No. 33.
33. Byron Jackson 2"—"1915" Centrifugal Belt  
Driven Sand Pump. To No. 34.
34. 4 ft. Callow Sloughing-off Cone.  
Spigot Discharge to No. 35 or No. 21.  
Overflow to No. 46.
35. 30"x14" Allis-Chalmers Style "B" Crushing  
Roll. 120 R. P. M. To No. 12.
36. Coarse Concentrate. To No. 39.
37. Fine Concentrate. To No. 39.
38. Slime Concentrate. To No. 39.
39. 6'—10"x16" Flat Top Concentrate Dryer—heavy  
ribbed cast-iron top plates—coal fired. To  
No. 40.
40. 1—6" Standard Gauge Screw Conveyor, 18 ft.  
long, driven by Bevel Gears and Sprocket

and Chain from Boot Sprocket of Elevator (41). To No. 41.

41. Sprocket and Chain Elevator, 12 ft. centers.  
Direct drive Head, driven by Belt from Magnetic Separator (43). To No. 42.
  42. Hopper bottom Bin for Dried Concentrates.  
To No. 43.
  43. 6 Pole Wetherill Magnetic Separator, with  
Magnets wound for 30,000–60,000 and 100,-  
000 Ampere turns. To Nos. 44 and 45.
  44. Magnetic garnet and iron to waste.
  45. Cleaned Scheelite Concentrate Box.  
To sacks and market.
  46. 8' Callow Sloughing-off Cone.  
Spigot Discharge tailing to waste.  
Overflow to No. 47.
- Flow Sheet for 100 Ton Concentrator, Sheet No. 4.
47. 14'x8' Dorr Thickener.  
Pulp Discharge—tailing to waste.  
Clear overflow to No. 48.
  48. Tank for Suction of Pump. To No. 49.
  49. 5"x7" Gould Triplex Plunger Pump. To No.  
53.
  50. 100,000 Gal. Redwood Tank, 30' dia. by 20'  
Staves. Main water supply reservoir. To  
No. 51.
  51. 3" Trident Crest Water Meter. To No. 52.
  52. 7"x6" Gould Triplex Plunger Pump, belt  
driven. To No. 53.
  53. 50,000 Gal. Redwood Tank, 24' dia. by 16' Stave.  
Mill Supply Reservoir.

54. 6' dia. by 6' Stave Redwood Tank with float valve. Water supply for Jig. To No. 19.
55. Nevada Valleys Power Co.'s Substation—Primary 60,000 Volts—Secondary 6600 Volts, 3 Phase, 60 Cycle.
56. Bowie Triple Horn Gap Lightning Arrester.
57. Three Pole Pacific-type 206 "G"—Style 2102, Pole Top Switch.
58. 3—50 K. W. 6600 to 440 Volt Transformers, "GE"—Type H. F. G.
59. 1—10 K. W. Westinghouse 6600 to 110 Volt Transformer.
60. Main Light Distributing System.
61. 1—400 Ampere Triple Pole Single Throw Knife Switch fused to 350 Amperes.
62. Crushing Plant Motor—50 HP. Type "CS" Westinghouse 440 Volt, 3 Phase, 60 Cycle, 690 R. P. M.  
Driving Nos. 5, 6, 7, 8 and 9.
63. Grinding Unit Motor—60 HP. Type "CS" Westinghouse 440 Volt, 3 Phase, 60 Cycle, 580 R. P. M.  
Driving Nos. 11, 17, 19, 21, 22, 23, 24 and 35.
64. Elevator and Trommel Motor—15 HP. Type "KT" General Electric, 440 Volt, 3 Phase, 60 Cycle, 1200 R. P. M.  
Driving Nos. 13, 15 and 18.
65. Concentrating Unit and Magnetic Separator Motor—30 HP. Type "KT" General Electric, 440 Volt, 3 Phase, 60 Cycle, 900 R. P. M.  
Driving Nos. 30, 31, 33, 40, 41, 43 and 68.

66. Thickener Motor—7½ HP. Type “KT” General Electric, 440 Volt, 3 Phase, 60 Cycle, 1800 R. P. M.

Driving Nos. 47 and 49.

Flow Sheet for 100 Ton Concentrator, Sheet No. 5.

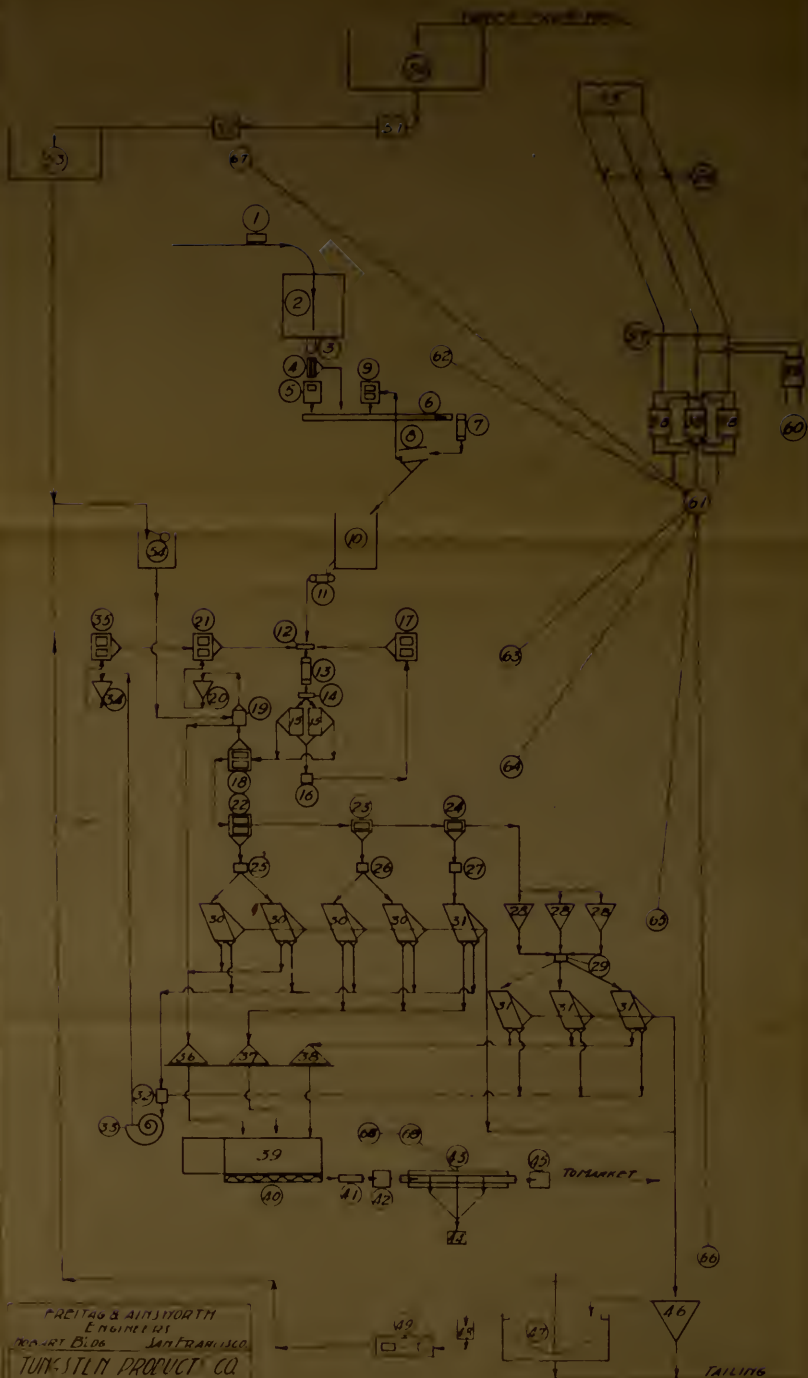
67. Pumping Plant Motor—15 HP. Type “CS” Westinghouse, 440 Volt, 3 Phase, 60 Cycle, 1700 R. P. M. Driving No. 52.

68. 6 K. W. 125 Volt D. C. General Electric Generator.

69. Magnetic Separator Switchboard.







PACIFIC & AINSWORTH  
 ENGINEERS  
 200-RT Bldg. SAN FRANCISCO  
 TUNGSTEN PRODUCT CO.  
 FLOW SHEET  
 FOR 100 TON TUNGSTEN  
 CONCENTRATOR  
 DRAWING NO. 2



# APPENDIX "B."

## From a Statement Submitted by NEVADA HUMBOLDT TUNGSTEN MINES COMPANY CONCENTRATES SOLD.

Lot No.	Tons	Pounds Concentrates	Per Cent WO <sub>3</sub>	Value
1	49,600	992	68.00	\$ 793.40
2	50,110	3220)		
3	163,265	10596)		
4	60,250	3812)	68.80	21,543.05
5	155,125	9065)		
6	126,287	5319)		
7	116,735	4902)	63.30	12,004.52
8	149,372	5924)		
9	63,032	3077	66.10	2,389.23
10	174,975	10880	67.20	8,590.84
11	169,942	9412	68.40	7,564.42
12	279,547	13872	68.90	11,204.52
13	466,547	21343	67.00	16,792.83
14 to 17	587,000	20306	60.10	13,904.55
18	134,300	5106	64.00	3,789.33
19	125,150	4833	63.30	3,627.10
20	348,700	14350	68.50	11,409.90
21	222,250	12801	69.00	10,260.04
22	260,500	14371	72.30	12,321.65
23	429,400	25002	72.00	21,130.47
24	289,650	11693	71.30	9,606.76

Lot No.	Tons	Pounds Concentrates	Per Cent WO <sub>3</sub>	Value
25	124,600	4604	69.10	3,694.
26	290,350	12005	68.70	9,559.
27	429,950	18847	70.60	15,593.
28	315,650	12345	69.90	10,139.
29	222,100	8551	68.20	6,851.
30	340,150	11528	71.50	9,707.
31	770,400	32145	67.00	24,731.
32	329,150	17961	58.60	12,103.
33	339,400	10150	51.80	6,008.
E1	49,554	2722	66.30	2,120.
E2	67,450	3421	65.10	2,616.
	77,700,491	345155		\$270,059.



# APPENDIX "C."

## From a Statement Submitted by NEVADA HUMBOLDT TUNGSTEN MINES COMPANY.

Shipping Concentrates on Hand.\*

January 13th, 1919.

Lot No.	Pounds Concentrates	Per Cent WO <sub>3</sub>	100% WO <sub>3</sub> Pounds
1	5492	61.70	3388
2	6068	66.50	4035
3	5283	65.80	3476
4	5324	68.10	3626
5	4106	68.70	2821
8	4658	64.20	2990
9	4710	63.60	2995
10	4644	62.30	2893
11	4674	62.20	2907
12	4824	59.50	2870
13	4032	68.60	2766
15	5636	63.50	3579
16	2907	71.60	2081
17	4835	64.10	3099
18	3911	63.60	2496
19	2816	72.70	2047
20	4187	61.70	2583
<hr/>			
	78107	64.85	50652

Total tonnage which produced shipping and sulphite concentrates—3456 tons.

Average saving—1.21% WO<sub>3</sub>.

\*NOTE: These concentrates have since been shipped.

H. B.

## APPENDIX "D."

From a Statement Submitted by  
NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY.

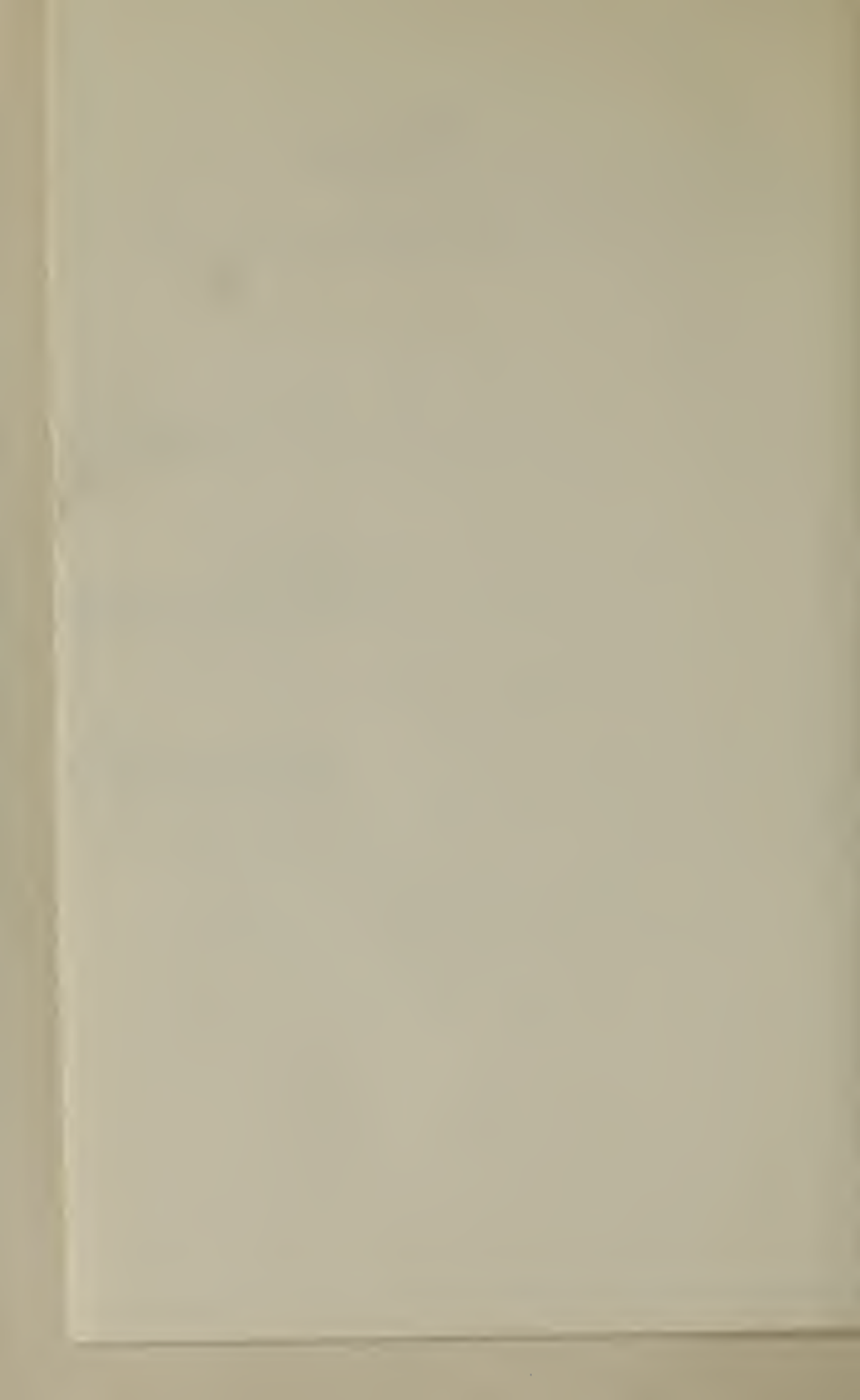
Sulphite Concentrates on Hand.\*

January 13th, 1919.

Lot No.	Pounds	Per Cent	100% WO <sub>3</sub>
	Concentrates	WO <sub>3</sub>	Pounds
1 CS	2370	41.20	976
2 CS	2151	41.20	886
3 CS	2160	42.80	924
4 CS	2153	38.60	831
5 CS	2175	37.60	818
6 CS	2159	38.10	823
7 CS	2167	38.90	843
8 CS	2115	40.20	888
9 CS	2313	39.60	916
10 CS	2059	37.80	778
11 CS	2102	37.20	782
12 CS	2054	39.90	819
13 CS	1926	40.80	924
34 to 38	28280	55.30	15639
6	5006	57.00	2853
7	4003	56.80	2274
14	1820	51.20	932
	<hr/> 67013		<hr/> 32906

\*NOTE: These concentrates have since been  
cleaned and shipped. H. B.









[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor, vs. Nev. Hum. Tungsten Co. et al. Bancroft's Map re Supplementary Report. Plffs. Ex. No. 20. Filed September 16, 1920. T. J. Edwards, Clerk.

No. 3902. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 28, 1922. F. D. Monekton, Clerk.

1912  
 FIELD  
 JAN 21 1922  
 P. D. MONCKTON,  
 CLERK.

127  
 1912  
 1912

SCALE: 1 INCH = 40 FEET

"S.P." VIEW, LOOKING N.W.

1912

1912

